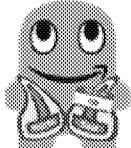

From: Campbell, Bradley [/O=AMAZON/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BCCAMPB3D6]
Sent: 4/16/2020 12:22:17 PM
To: Joseph, Rob [josephrj@amazon.com]
Attachments: Executive Summary_Gerald Bryson_JFK8 Termination v2.docx

Have a great day --



Bradley Campbell SPHR, SHRM-SCP
Regional Sr. HR Manager – North American Customer Fulfillment
e: bccampb@amazon.com | p: (646) 285-4914

AMAZON Message Review Conversation Page 2 of 52 PageID # 3713

CONFIDENTIAL GC EXHIBIT 115**Chat with "Gutierrez, Milly" <gmilly@amazon.com>...**

gmilly@amazon.com & hrnanch@amazon.com

Earliest item: 2020-04-06

11:01:31

Latest item: 2020-04-06

11:02:15

All Parties: Gutierrez, Milly <gmilly@amazon.com>; **Hernandez, Christine <hrnanch@amazon.com>****Monday 06 April 2020****Hernandez, Christine <hrnanch@amazon.com>**

my notes

11:01:31

Hernandez, Christine <hrnanch@amazon.com>

Monday 4/6/20 (Demonstration) (kicks off with small group of 8 by the AMAZON sign at the start of OB break around 12:05pm)

Media - NY1Spectrum / Helicopter? ABC? /

8 people at the start - not all AA's (looks like 5 are not employees)

Derrik Palmer -- blow horn asking about the number of cases; managers are criminals; managers that wear Safety Vest are a disgrace; lack of security checks; security we don't check for weapons; managers being sent home and being kept a secret; quarantined AA's have not been paid; people in the executive office are racist; we ain't dumb N***;

Gerald Bryson -- pink Jayy Flowers --- spoke with the media on camera

Helly Rangel - Blue sign - tentatively (DA5- 7:15) last on site 3/30/20; Vacation time for today

Female? - (9) (arrived after 12:40pm) with white sign / red & black mask / appears to be AA

Signs "shut down and sanitize" "Treat your workers like customers" "JFK8 How many cases do we have? #Amazonstrike #Shutitdown" "Billionaires put their wealth over our health close JFK8"

"Jeff Bezos has blood on his hands" "Alexa Send us home" "Chris Smalls We stand behind you"

AMAZON Sign on the corner of the PL -- 7 ---5 individuals chanting by the sign (4 are media) the other 2 moved to the front of the building (Derrik and Gerald)

12:15pm --Geoff goes out to address SD with the team (4 in total - 3 identified; 1 not sure);

Derrik was interviewing on a cell phone at the time

12:23pm - Insubordination talking points delivered to Derrik via Geoff

12:40pm - (10) Smalls arrives at the bus stop; same black sign as last week; speaking to the media

Around 12:55pm -- 6 outside the property are not employees; all have signs and 1 is videoing

11:01:38

Hernandez, Christine <hrnanch@amazon.com>

1:33 Smalls leaves

11:02:15

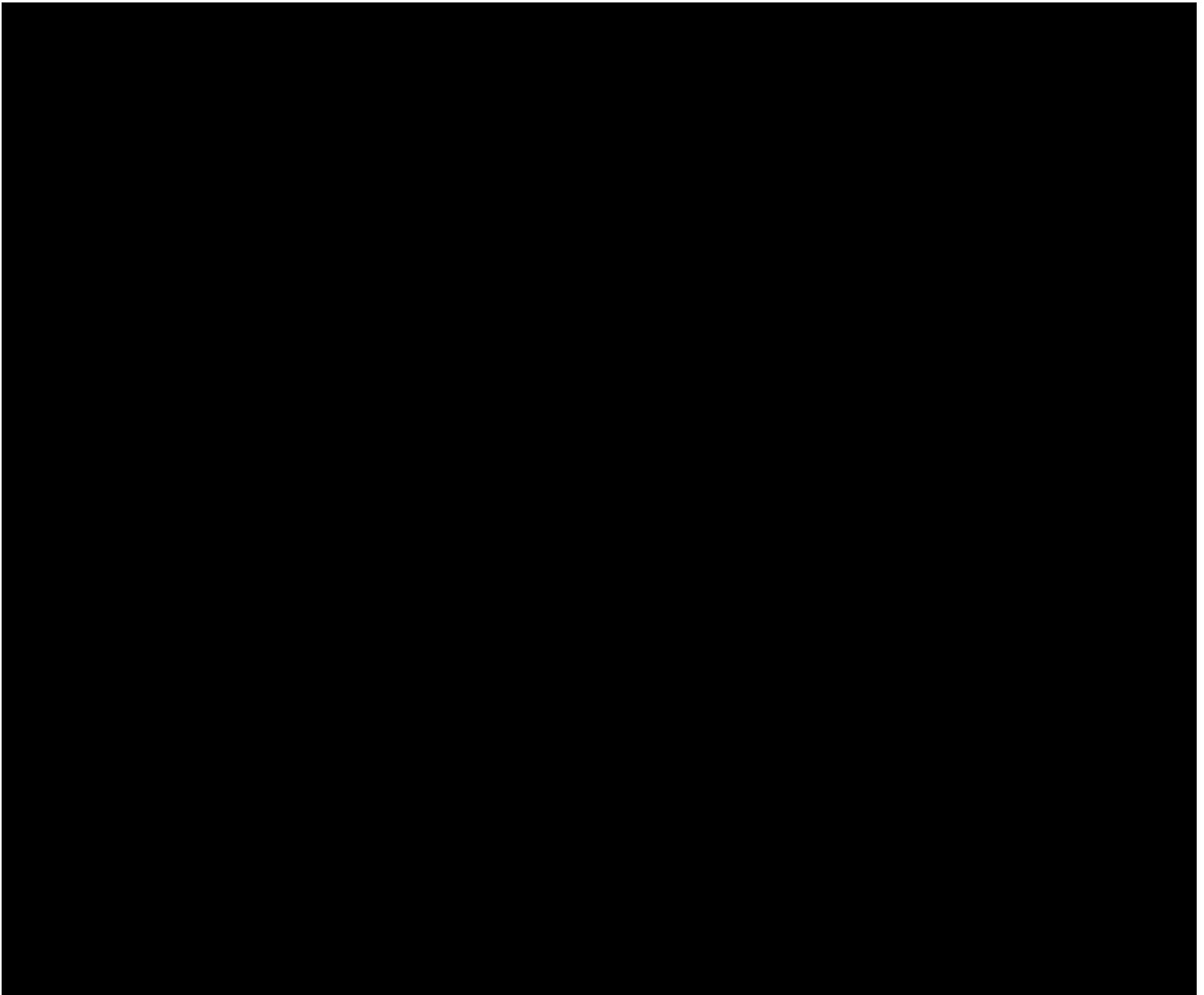
End Thread**Thread Statistics**

Instant Message Count: 3

CONFIDENTIAL**AMZ-BRY007998**

ATTORNEY-CLIENT PRIVILEGE

[EXTERNAL EMAIL]

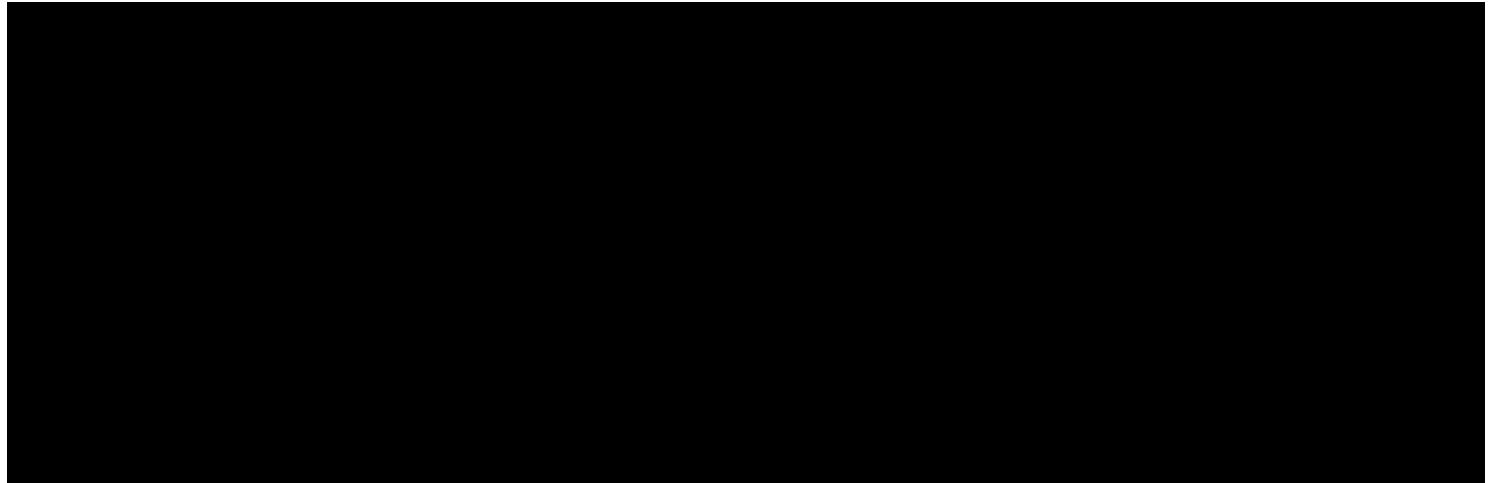


CONFIDENTIAL

GC Exhibit 116

CONFIDENTIAL

AMZ-BRY008754



Monday 4/6/20 (Demonstration) (kicks off with small group of 8 by the AMAZON sign at the start of OB break around 12:05pm)

Media - NY1Spectrum / Helicopter?

8 people at the start - not all AA's (looks like 5 are not employees)
Derrik Palmer -- blow horn asking about the number of cases; managers are criminals; managers that wear Safety Vest are a disgrace; lack of security checks; security we don't check for weapons; managers being sent home and being kept a secret; quarantined AA's have not been paid; people in the executive office are racist; we ain't dumb N***;
Gerald Bryson -- (out since 3/21/20) pink; spoke to an AA who was coming back from lunch Dimitra Evans; yelling at the another employee in profanity to join them outside; on FB live made fun of her "looking a junkie on fentanyl"; lots of inflammatory statements on FB live.
Jayy Flowers --- (2/27 last punch /3/13 last on site) spoke with the media on camera
Helly Rangel - Blue sign - tentatively (DA5- 7:15) last on site 3/30/20; Vacation time for today
Female? - (9) (arrived after 12:40pm) with white sign / red & black mask / appears to be AA
Male? - Marcus Reid (not identified)

Signs "shut down and sanitize" "Treat your workers like customers" "JFK8
How many cases do we have? #Amazonstrike #Shutitdown" "Billionaires
put their wealth over our health close JFK8"
"Jeff Bezos has blood on his hands" "Alexa Send us home" "Chris Smalls
We stand behind you"

AMAZON Sign on the corner of the Parking Lot -- 7 people ---5 individuals
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12:15pm --Geoff goes out to address SD with the team (4 in total - 3
identified; 1 not sure); Derrik was interviewing on a cell phone at the
time

12:23pm - Insubordination talking points delivered to Derrik via Geoff

12:40pm - (10) Smalls arrives at the bus stop; same black sign as last
week; speaking to the media

12:48pm - Maciej calls Sai to tell him that Gerlad screams at an AA
(Dimitra Evans) walking back from lunch; cursing at her to join them
Around 12:55pm -- 6 outside the property are not employees; all have
signs and 1 is videoing

1:34pm - Smalls leaves

2:10pm - Derrik and 2 others leave in his car

2:10pm -- 3 press still on site; NY1

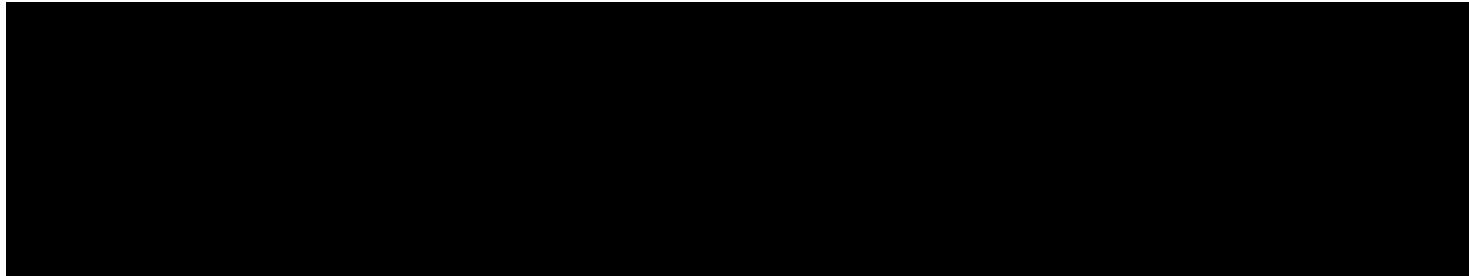
Athena

Make the Road NY

[REDACTED]

CONFIDENTIAL

GC Exhibit 116



CONFIDENTIAL

AMZ-BRY008757

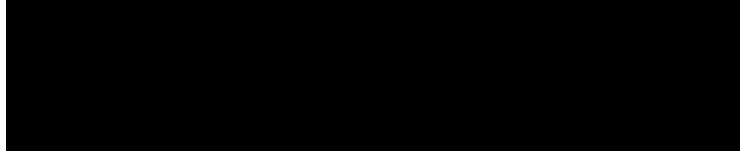
CONFIDENTIAL

GC Exhibit 116

Thank You,

CONFIDENTIAL

GC Exhibit 116



CONFIDENTIAL

AMZ-BRY008759

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

AMAZON.COM SERVICES LLC)
)
)
 and) Case 29-CA-261755
)
 GERALD BRYSON, and Individual.)

**RESPONDENT'S COMBINED PETITION TO REVOKE COUNSEL FOR THE
ACTING GENERAL COUNSEL'S SUBPOENA AD TESTIFICANDUM A-1-1CLMM85
AND MOTION FOR RECONSIDERATION OF CERTAIN ORDERS REGARDING
SUBPOENAS DUCES TECUM**

Pursuant to Section 11(1) of the National Labor Relations Act and Section 102.31(b) of the Rules and Regulations of the National Labor Relations Board (“NLRB” or “Board”), Amazon.com Services LLC (“Respondent,” “Amazon,” or the “Company”), through its undersigned counsel, petitions to revoke subpoena ad testificandum (A-1-1CLMM85) served by Counsel for the Acting General Counsel of the Board (“CAGC”) upon counsel for Amazon (“CAGC’s Third Subpoena”) on Monday, May 17, 2021. A copy of the subpoena is attached as Exhibit 1.

In addition, pursuant to Section 102.25 of the Board’s Rules and Regulations, Amazon seeks reconsideration of certain portions of Administrative Law Judge Benjamin Green’s (“Judge Green’s”) March 24, 2021 written order denying Amazon’s petition to revoke the CAGC’s subpoena duces tecum (A-1-1BUGMIX) (Exhibit 2); the April 27, 2021 written order denying Amazon’s petition to revoke the Charging Party’s subpoena duces tecum (B-1-1C9GVF7) (Exhibit 3); and the May 1, 2021 verbal order¹ denying Amazon’s petition to

¹ Transcript, Volume 4, at 269. (Relevant portions of the trial transcript are attached as Exhibit 4.)

revoke the CAGC's second subpoena tecum (B-1-1CBQM1N) to the extent that the documents sought therein are relevant to a determination of (1) whether Mr. Bryson was engaged in protected concerted activity at the time of his misconduct on April 6, 2020; (2) whether the Respondent knew that Bryson was engaged in protected concerted activities at the time of his misconduct on April 6, 2020; and/or (3) Respondent's motivation for terminating Mr. Bryson, including whether Respondent harbored animus toward Bryson's protected concerted activities.

INTRODUCTION

At the outset of this hearing, the parties disputed the precise nature of Gerald Bryson's actions on March 25, March 30 and April 6, 2020, and specifically, the precise nature of Mr. Bryson's actions and statements during an April 6 altercation with a female coworker and whether the altercation occurred in the course of protected concerted activity. The issues in this case have narrowed significantly since then due, in significant part, to the introduction into evidence of a Facebook Live video recorded by CAGC witness Mandi Velasco ("the Velasco video") and other video evidence showing the April 6, 2020 altercation in its near entirety and in all material ways. *See R. Exh. 122.* Further, given that the weight of evidence shows that Mr. Bryson was engaged in protected concerted activities on March 25, March 30 and at the time of the altercation on April 6, 2020, Amazon filed a Motion for Leave to File a Third Amended Answer on Saturday, May 22, 2021, in which Amazon concedes Mr. Bryson engaged in protected concerted activity on those dates.

The Respondent's concession in this regard and the revelation that Mr. Bryson was engaged in protected concerted activity at the time of his altercation with Ms. Evans, confirms Judge Green's conclusions, stated repeatedly in off-the-record discussions during the hearing and,

most recently, in his May 19, 2021 Order on CAGC's Motion to Consolidate Cases for Hearing,² that the *only* legal standard applicable in this case – or any case in which an employer discharges an employee because of misconduct occurring during the course of protected activity – is the standard enunciated in *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964). *Wright Line*, 251 N.L.R.B. 1083 (1980), enforced, 662 F.2d 899 (1st Cir. 1981), “is inapplicable to cases — like this one — in which the employer has discharged the employee because of alleged misconduct in the course of protected activity. *Shamrock Foods Co.*, 337 N.L.R.B. No. 138, at 1 ; *see Cadbury Beverages*, 160 F.3d at 29 n. 4 (rejecting the applicability of *Wright Line* to such cases); *E.W. Grobbel Sons*, 322 N.L.R.B. 304, 304-05 , (1996) (same), *enforcement denied on other grounds*, 6th Cir. 1998.” *Shamrock Foods Co v. NLRB.*, 346 F.3d 1130, 1136 (D.C. Cir. 2003). In a *Burnup & Sims* case, the employer’s “motive is not at issue,” and the only question is whether the misconduct actually occurred. *Shamrock Foods Co.*, 337 NLRB 915, 915 (2002), enfd. 346 F.3d 1130 (D.C. Cir. 2003); *Cadbury Beverages, Inc. v. NLRB*, 160 F.3d 24, 29 (D.C. Cir. 1998) (holding that “*Burnup & Sims* explicitly obviates the need to inquire into intent”).

As a result of these developments, testimony and documents related to whether Mr. Bryson was engaged in protected activity at the time of his misconduct on April 6, 2020, whether Respondent knew that he was engaged in those activities, and Respondent’s motivation for terminating Mr. Bryson, including whether Respondent harbored animus toward him or those activities, are entirely irrelevant to this case and have no utility in determining whether the CAGC can carry its burden to prove that Respondent violated Section 8(a)(1) of the National Labor Relations Act, 29 U.S.C. §158(a)(1), by terminating Mr. Bryson on April 17, 2020.

² See Administrative Law Judge’s Order on Counsel for the Acting General Counsel’s Motion to Consolidate Cases for Hearing, at 2, 4 (May 19, 2021) (“Order Denying Motion to Consolidate”).

It is now undisputed that Mr. Bryson engaged in protected concerted activity at the time of his misconduct on April 6, 2020 and that Amazon knew of Mr. Bryson's activity. The only remaining question is whether the CAGC can prove that Mr. Bryson did not, in fact, engage in misconduct during the altercation, as alleged by Respondent.

As a result, much of the testimony and evidence in the record currently is irrelevant to a determination in this case and the CAGC's Third Subpoena seeks to adduce additional irrelevant testimony. Similarly, numerous subpoena requests for documents, enforced when the scope of this case was less well defined, have been rendered irrelevant, unnecessary, and moot by subsequent evidence as described herein, and those subpoena requests should be quashed for the same reason.

For these reasons, Respondent Petitions to revoke the CAGC's Third Subpoena and Moves for reconsideration of ALJ Green's orders enforcing various subpoena paragraphs seeking documents related to issues that have been rendered irrelevant, unnecessary, and moot by the development of the record in this case.

I. PETITION TO REVOKE THE CAGC'S THIRD SUBPOENA

The subpoena subject to Petition to Revoke was received via email by counsel for Amazon on Monday, May 17, 2021. By their Third Subpoena, the CAGC seeks to compel the testimony of Amazon Human Resources Manager, Christine Hernandez, who held that position at Amazon's JFK8 Fulfillment Center during the time period relevant to this case.

Section 102.31(b) of the Board's Rules and Regulations requires an Administrative Law Judge ("ALJ") to revoke a subpoena where "the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings." 29 C.F.R. § 102.31(b). A subpoena must be "for a legitimate purpose" and

“the inquiry in question must be reasonably related to the purpose.” *NLRB v. U.S. Postal Serv.*, 790 F. Supp. 31, 34 (D.D.C. 1992); *see also Drukker Commc’ns, Inc. v. NLRB*, 700 F.2d 727, 730 (D.C. Cir. 1983) (“[T]he statute explicitly permits the quashing of subpoenas ... for irrelevance.”); *NP Red Rock, LLC*, 28-CA-244484, 2020 WL 7075063 (unpub. Or. Dec. 2, 2020) (affirming ALJ’s order revoking General Counsel’s subpoenas ad testificandum issued to respondent’s two corporate executives where the executives’ testimony was not needed to establish a *prima facie* case and its relevance and probative value to rebutting the employer’s defenses was speculative). In addition, the Board will revoke subpoenas that seek “cumulative or duplicative” information. *See McDonalds USA, LLC*, 363 NLRB No. 144, slip op. at 2 fn. 2 (2016); *Brinks, Inc.*, 281 NLRB 468, 469 (1986) (citing Federal Rules of Civil Procedure 45(b) and 26(b)).

The information sought by the CAGC’s Third Subpoena – testimony from Ms. Hernandez – is not relevant to any matter in question in this proceeding or would serve only to duplicate prior testimony. Although the CAGC has not explained why the government subpoenaed Ms. Hernandez to testify at this proceeding, at best her testimony would relate either to Tyler Grabowski’s investigation (as she was his supervisor during the relevant time period), whether Charging Party Gerald Bryson was engaged in protected concerted activity on March 25, March 30 and at the time of his misconduct on April 6, 2020, and/or Respondent’s motivation for terminating the Charging Party and whether Respondent harbored animus toward him or his protected activities.

Regarding Respondent’s investigation, Mr. Grabowski, not Ms. Hernandez, conducted the investigation, as Mr. Grabowski ably explained during his detailed testimony on Monday, May 17, 2021. Exhibit 4, at 148-196. Any testimony Ms. Hernandez could

provide on this point would be cumulative and duplicative of evidence that is already in the record – including Mr. Grabowski’s own testimony.

More importantly, now though, any inquiry into whether Mr. Bryson was engaged in protected activities at the time of his misconduct and whether Respondent was aware of those activities has been rendered moot by Respondent’s Motion for Leave to Amend its Second Amended Answer to the Complaint. Any testimony on these issues, therefore, would be irrelevant and would extend an already unnecessarily lengthy trial.

Testimony related to Amazon’s motivation for terminating Mr. Bryson, including whether Amazon harbored animus toward his protected activities is similarly irrelevant to the *Burnup & Sims* analysis, the legal analysis applicable in this case. Further, because the Charging Party’s misconduct during the April 6 altercation can be analyzed solely on the basis of the Velasco video (R. Exh. 122) and other video evidence in this case, there is no need any fact witness testimony – let alone additional testimony from Ms. Hernandez – related to Respondent’s motivation or potential animus toward Mr. Bryson’s protected activities.

To the extent that the CAGC intends to adduce evidence of Ms. Hernandez’s recollection of the events on April 6, 2020, that evidence is also irrelevant to any issue before Judge Green. The best evidence of Mr. Bryson’s misconduct is the Velasco video, together with other video evidence. Ms. Hernandez has no first-hand knowledge regarding what happened out in the parking lot on April 6 and there is nothing in the record that suggests she witnessed it. Nor is there any evidence that she was a decision-maker whose good faith belief matters as to the reasons for Charging Party’s termination. As a result, Ms. Hernandez’ belief as to what occurred is unnecessary to decide the issues in this case. There

is, simply, no reason for Ms. Hernandez to be compelled to testify, or for the CAGC to be permitted to subpoena additional witnesses to testify, about matters that are not relevant to the resolution of this case. It is time to end this single discharge hearing that is unnecessarily continuing into its fourth week.

Ms. Hernandez simply has nothing to add to a record already filled with irrelevant testimony and evidence and Amazon respectfully requests the CAGC's Third Subpoena be revoked in its entirety.

II. MOTION FOR RECONSIDERATION OF CERTAIN ORDERS REGARDING SUBPOENAS

For identical reasons, Amazon requests that ALJ Green reconsider his prior rulings on CAGC Subpoena B-1-1BUGMIX Paragraph 19, Charging Party Subpoena B-1-1C9GVF Paragraphs 19(b) and (c), and CAGC Subpoena B-1-1CBQM1N Paragraph 27 to the extent that those subpoenas sought and Respondent was required to produce documents and information relevant to (i) Mr. Bryson's protected activities, including at the time that he engaged in misconduct on April 6, 2020, (ii) whether Respondent knew of those activities, (iii) Respondent's motivation for Mr. Bryson's termination and (iv) other individuals not named in the Amended Complaint.

All documents produced in response to numerous enforced subpoena requests have been rendered unnecessary and/or irrelevant by the development of the record, particularly the Velasco video and Amazon's concession that Bryson's April 6 altercation with a coworker occurred in the course of otherwise protected concerted activity.

A. Identification of Irrelevant and Unnecessary Subpoena Paragraphs

Amazon requests reconsideration of the following subpoena requests and orders:

CAGC Subpoena B-1-1BUGMIX

19. For the time period from March 1, 2020 to April 30, 2020, documents mentioning, discussing or pertaining to the Charging Party's discussion with employees or discussions with Respondent's supervisors, managers or agents on behalf of employees regarding COVID-19 safety precautions including:

- (a) Internal communications including but not limited to electronic communications, emails, text messages, notes, meeting minutes, meeting handouts, and investigative reports by, between and among Respondent's supervisors and/or agents regarding Bryson raising COVID-19 safety concerns at Respondent management meetings.
- (b) Internal communications including but not limited to electronic communications, emails, text messages, notes, meeting minutes, meeting handouts, and investigative reports by, between and among Respondent's managers, supervisors and/or agents regarding media coverage of Bryson protesting;
- (c) Internal communications including but not limited to electronic communications, emails, text messages, notes, meeting minutes, meeting handouts, and investigative reports by, between and among Respondent's supervisors and/or agents regarding Bryson's participation in protests outside of Respondent's JFK8 Facility regarding COVID-19 safety concerns;

and

- (d) Documents mentioning, discussing or pertaining to employee sentiment regarding greater COVID-19 safety precautions, including but not limited to lists identifying likely or possible protest supporters or organizers.

The ALJ denied Amazon's Petition to Revoke the above subpoena requests by written order dated March 24, 2021. (Order on Trial Dates and the Respondent's Petition to Partially Revoke Counsel for the Acting General Counsel's Subpoena Duces Tecum, at 5-6 (Mar. 24, 2021) ("March 24 Subpoena Order").) Specifically, the ALJ ruled that documents responsive to this subpoena request were relevant because they related to "any protected concerted activity engaged in by Bryson and the Respondent's knowledge, if any of that conduct." *Id.* at 6.

Charging Party Subpoena B-1-1C9GVF7

19. For the time period from March 1, 2020 to April 30, 2020, documents mentioning, discussing, or pertaining to the Charging Party's discussions with employees or discussions with Respondent's supervisors, managers, Human Resources Business Partners, or agents on behalf of employees regarding COVID-19 safety precautions including:

- b. Internal communications including but not limited to electronic communications, emails, Chime messages or calls, text messages, notes, meeting minutes, meeting handouts, and investigative reports by, between, and among Respondent's managers, supervisors, and/or agents regarding media coverage of Christian Smalls, Derrick Palmer, Jordan Flowers, and/or Bryson protesting; [and]
- c. Internal communications including but not limited to electronic communications, Chime messages or calls, emails, text messages, notes, meeting minutes, meeting handouts, and investigative reports by, between, and among Respondent's managers, supervisors, and/or agents regarding Christian Smalls, Derrick Palmer, Jordan Flowers, and/or Bryson participating in protests outside Respondent's JFK8 Facility regarding COVID-19 safety concerns.

The ALJ denied Amazon's Petition to Revoke the above subpoena requests by written order dated April 27, 2021. (Order on the Respondent's Petition to Revoke Charging Party's Subpoena Duces Tecum B-1-1C9GVF7 and Request for a Protective Order, at 1-2 (Apr. 27, 2021) ("April 27 Subpoena Order").) The ALJ found subpoena paragraphs 19(b) and (c) were relevant because they sought evidence concerning Amazon's treatment of other employees who were involved in protected concerted activities with Bryson. *Id.* at 2. In doing so, the ALJ noted he "share[d] the concern of Respondent's counsel that the scope of this litigation might expand to involve 'mini-trials' (if not full blown *Wright Line* inquiries) regarding adverse employment actions not listed in the complaint," but given the Board's "broad discovery-type standard of relevance" for subpoena requests, the ALJ declined to revoke paragraphs 19(b) and (c) "at this time." *Id.*

CAGC Subpoena B-1-1CBQM1N

27. (a) Documents in effect during the period of April 17, 2020 through May 31, 2020 reflecting and/or mentioning Respondent's policies regarding employees' option to appeal disciplinary actions taken against them by Respondent, including written warnings, suspensions and discharges.

(b) Documents in effect during the period of April 17, 2020 through May 31, 2020 reflecting and/or mentioning the process by which employees may request to appeal disciplinary actions taken against them by Respondent, including written warnings, suspensions and discharges.

The ALJ orally denied Amazon's Petition to Revoke the above subpoena requests on the record on May 1, 2021. Exhibit 4, at 269. These documents relate to animus and not to any other issue before Judge Green.

B. Argument³

First, ALJ Green should revisit his previous ruling and grant Respondent's Petition to Revoke CAGC Subpoena B-1-1BUGMIX paragraph 19 because the basis for the ALJ's prior denial of Amazon's Petition to Revoke – that paragraph 19 sought relevant evidence regarding “protected concerted activity engaged in by Bryson and the Respondent's knowledge, if any of that conduct” – no longer exists, in light of the video evidence in the record and Amazon's

³ Amazon has largely completed its production of documents responsive to all three subpoenas. Amazon currently is only aware of a small set of unproduced documents, none of which bear on any of the relevant *Burnup & Sims* issues. Some of those documents are Chime threads that contain a mix of responsive and non-responsive information. Amazon is prepared to produce those Chimes, but redacted to reveal only that information that responds to a specific request – as it did previously. If the CAGC and Charging Party are willing to accept such a production without an *in camera* review, Amazon will produce the small amount of remaining *responsive* information (under Judge Green's prior relevance determination) it has collected even though now irrelevant. That will render this Motion for Reconsideration moot as there will be nothing else to produce. If, however, the CAGC and Charging Party seek to pry into what are non-responsive, privileged or private electronic conversations, Amazon seeks the revocation of any and all subpoena requests that seek information regarding whether the Charging Party engaged in PCA on April 6 (conceded) and animus (irrelevant), as identified above.

Third Amended Answer, which concedes these allegations. (Draft Third Amended Answer, para. 5(c).)

Second, ALJ Green should revisit his ruling on Respondent's Petition to Revoke Charging Party Subpoena B-1-1C9GVF7 paragraphs 19(b) and (c) and CAGC Subpoena B-1-1CBQM1N paragraph 27 and revoke those paragraphs in their entireties because they all seek evidence limited to potential animus by Respondent against Charging Party as a result of his protected activities. Evidence related to employer motivation, including whether the employer harbored animus toward an individual's protected activities, is irrelevant under a *Burnup & Sims* analysis. *See Shamrock Foods Co.*, 337 NLRB at 915 (finding that in a *Burnup & Sims* case "motive is not at issue"); *Cadbury Beverages*, 160 F.3d at 29 (same). In fact, as ALJ Green noted in denying the CAGC's Motion to Consolidate this case with NLRB Case 19-CA-266977, a case involving the discharge of two entirely separate employees in Seattle, evidence regarding Amazon's treatment of other employees – even to the extent it could theoretically establish anti-union animus – is immaterial to the issues in this case. *See* Consolidation Order, at 4.⁴

⁴ Moreover, the CAGC's recent unsuccessful effort to consolidate this case with NLRB Case 19-CA-266977 reveals the real purpose of these subpoena requests was not to obtain information relevant to litigating the narrow issues in this case, but rather to inject unrelated issues and claims involving other employees into this litigation. The ALJ previously expressed concerns regarding the scope of the subpoena requests involving employees other than Mr. Bryson, *see* April 27 Subpoena Order, at 2 (expressing concern that "the scope of this litigation might expand to involve 'mini-trials' (if not full blown *Wright Line* inquiries) regarding adverse employment actions not listed in the complaint"); Exhibit 4, at 229 (addressing subpoena requests for information regarding Christian Smalls and Derrick Palmer and stating "I am loathe to effectively have a trial regarding two additional employees"), but at the time denied Respondent's petitions to revoke based on the Board's broad relevance standard for subpoenas. However, the current record in this case and CAGC's failed attempt to consolidate this case with NLRB Case 19-CA-266977 confirms Judge Green's concerns about the expansion of this matter were well-founded, and provides additional support for revoking the subpoena requests relating to other employees' alleged protected concerted activities.

CONCLUSION

For the foregoing reasons, Amazon respectfully requests that CAGC Subpoena A-1-1CLMM85; CAGC Subpoena B-1-1BUGMIX; Charging Party Subpoena B-1-1C9GVF7; and CAGC Subpoena B-1-1CBQM1N be revoked as set forth above.

Date: May 24, 2021

Respectfully submitted,

/s/ Christopher J. Murphy
Christopher J. Murphy
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Phone: +1.215.963.5601
Fax: +1.215.963.5001
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nicole.buffalano@morganlewis.com

*Attorneys for Respondent
Amazon.com Services LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Respondent Amazon's Combined Petition to Revoke Counsel for the Acting General Counsel's Subpoena Ad Testificandum A-1-1CLMM85 and Motion for Reconsideration of Certain Orders Regarding Subpoenas Duces Tecum was served on May 24, 2021 via electronic mail upon the following:

Evamaria Cox
Counsel for the Acting General Counsel
National Labor Relations Board, Region 29
Two Metro Tech Center, Suite 5100
Brooklyn, NY 11201
Evamaria.Cox@nrb.gov

Frank Kearn
Charging Party's Legal Representative
Make the Road New York
161 Port Richmond Ave.
Staten Island, NY 10302
frank.kearl@maketheroadny.org

Date: May 24, 2021

/s/ Kelcey J. Phillips
Kelcey J. Phillips
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Phone: +1.202.739.5455
Fax: +1.202.739.3001
kelcey.phillips@morganlewis.com

*Attorney for Respondent
Amazon.com Services LLC*

EXHIBIT 1



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 29

Two Metro Tech Center
Suite 5100
Brooklyn, NY 11201

Agency Website: www.nlrb.gov
Telephone: (718)330-7713
Fax: (718)330-7579

May 17, 2021

VIA EMAIL & UPS

Christine Hernandez, Human Resource Manager
Amazon.com Services, LLC
546 Gulf Avenue
Staten Island, NY 10314

Re: Amazon.com Services LLC (Case No.: 29-CA-261755)

Dear Ms. Hernandez:

Enclosed, please find a *subpoena ad testificandum* requiring your appearance before an Administrative Law Judge of the National Labor Relations Board at a Zoom Videoconference hearing on May 24, 2021 at 10:00 a.m. and consecutive days thereafter.

Please be aware that failure to attend the Zoom Videoconference hearing could result in the Agency petitioning the United States District Court for enforcement of the subpoena. Should you have any questions please contact me at the telephone number below. Thank you for your assistance in this matter.

Very truly yours,

/s/ Evamaria Cox

Evamaria Cox, Board Attorney
Direct No.: 718.765.6172
Evamaria.Cox@nlrb.gov

cc: Christopher J. Murphy, Esq. (via electronic mail)
Nicole Buffalano, Esq. (via electronic mail)
Kelcey Phillips, Esq. (via electronic mail)

SUBPOENA**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

Christine Hernandez, Human Resources Manager
To Amazon.com Services, LLC

546 Gulf Avenue Staten Island, NY 10314

As requested by Evamaria Cox, Counsel for General Counsel

whose address is Two Metro Tech Center, Suite 5100, Brooklyn, NY 11201-3838
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge

of the National Labor Relations Board

at Zoom Video Hearing

in the City of Brooklyn

on Monday, May 24, 2021 at 10:00 AM or any adjourned

Amazon.com Services LLC

or rescheduled date to testify in 29-CA-261755

(Case Name and Number)

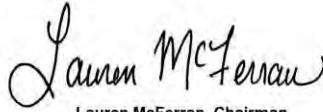
If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

A-1-1CLMM85

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Brooklyn, NY

Dated: May 17, 2021



Lauren McFerran, Chairman



NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

EXHIBIT 2

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

AMAZON.COM SERVICES LLC

and

Case 29-CA-261755

GERALD BRYSON, AN INDIVIDUAL

ORDER ON TRIAL DATES AND THE RESPONDENT'S
PETITION TO PARTIALLY REVOKE COUNSEL FOR
THE ACTING GENERAL COUNSEL'S SUBPOENA DUCE TECUM

The parties have requested that the trial open as scheduled on March 29, 2021 to trigger the production of subpoenaed documents on a rolling basis and then be postponed for the taking of testimony to begin on May 3, 2021. That arrangement is acceptable and so ordered.

The Respondent filed a petition to revoke subpoena duces tecum B-1-1BUGMIX, which Counsel for the Acting General Counsel (CGC) issued on March 1, 2021. The subpoena issued “[u]nder the seal of the National Labor Relations Board, and by direction of the Board,” with the signature of Board Chairman Lauren McFerran affixed thereto. The Respondent contends in its petition that the Office of the General Counsel has no authority to prosecute the case after former General Counsel Peter B. Robb was removed from office by the President of the United States on January 20, 2021 and subsequently replaced by Acting General Counsel Peter Sung Ohr (AGC). The Respondent also raises a number of other objections to the subpoena requests.

The complaint issued on December 22, 2020 and alleges that the Respondent violated Section 8(a)(1) of the Act by unlawfully suspending and discharging Gerald Bryson, an employee at the Respondent's fulfillment center in Staten Island, New York (JFK8 facility).

Prosecution after the Removal of Former General Counsel Peter B. Robb

I reject the Respondent's petition to the extent it asserts that the case cannot be prosecuted because the President improperly removed Robb from the position of General Counsel. In reaching this conclusion, I do not find it necessary to determine whether Robb was lawfully or unlawfully removed. Rather, I find that the complaint properly issued when Robb was General Counsel and is subject to prosecution by Regional counsel, including by the use of subpoenas duces tecum.

Under Section 10(b) of the National Labor Relations Act (Act), the Board, or any agent or agency designated by the Board, has authority to issue complaints. Under Section 3(d) of the Act, the General Counsel has “final authority, on behalf of the Board, in respect of . . . issuance of complaints . . . and in respect to the prosecution of such complaints before the Board . . .” Here, the complaint issued while Robb was still General

Counsel and neither the Board nor the AGC have sought to dismiss it. Accordingly, there is no dispute as to who has ultimate authority to issue the instant complaint. The complaint properly issued under Robb and is valid.

Under Section 11(1) of the Act, the Board has authority, upon application by a party, to issue subpoenas to such party requiring the production of evidence. As noted above, the subpoena at issue is affixed with the signature of the Chairman of the Board; not the AGC. In section 102.31(a) of the Board's rules and regulations, Regional Directors, not the General Counsel, are designated as the agents responsible for issuing subpoenas before a hearing opens. The General Counsel plays no role in this process and the removal of Robb is irrelevant to the validity of the subpoena in question.

The Respondent has not otherwise established that a properly issued complaint cannot be prosecuted or that a properly issued subpoena cannot be used in the course of that prosecution. As noted above, although the General Counsel may have "final authority . . . in respect to the prosecution of such complaints before the Board," the AGC has not sought to exercise any such authority in this case and there is no such action for the Respondent to contest. Further, a General Counsel need not be in place to preside over the prosecution of a complaint which issued before the General Counsel left office. *NLRB v. Gemalo*, 130 F. Supp 500, 501 (S.D.N.Y 1955) (complaint that issued before a General Counsel resigned could be prosecuted by a staff attorney after the General Counsel position became vacant). Accordingly, there is no reason a valid complaint cannot be processed by Regional staff even if, currently, there is no validly appointed General Counsel.

Other Objections to the Subpoena Requests

The Respondent asserts certain general objections to all the subpoena requests and certain specific objections to individual subpoena requests. The CGC has agreed to withdraw request numbers 2 to 6 on the basis of a stipulation among the parties that Tyler Grabowski is a statutory supervisor. Without waiving its general objections, the Respondent has also agreed to produce non-privileged documents responsive to request numbers 9 to 15. I address the remaining subpoena requests (1, 7-8, 16-19) below.¹

Initially, I note that the Respondent has objected to the production of privileged documents and is not required to produce such materials. However, the Respondent must describe specific privileged documents in a privilege log provided to the CGC when the record opens on March 29, 2021 or as soon thereafter as is possible. The privilege log should comply with the requirements of Rule 26 of the Federal Rules of Civil Procedure.

Request Number 1

- 1. Organizational charts and other documents showing Respondent's managerial structure, hierarchy or chain of command for the Respondent's JFK8 Facility during the period covered by this subpoena [May 1, 2019 through April 30, 2020], including documents that show any changes to the**

¹ To the extent this order does not specifically reference and address certain objections to the subpoena, those objections are rejected.

reporting protocols and chain of command.

The CGC seeks this information to determine whether management treated Bryson differently than other employees with regard to misconduct and discipline. On that basis, I find that the request relates to a matter in question and is relevant. I also find that the temporal scope of the request is appropriate.

The Respondent nevertheless contends that the production of responsive documents would be unduly burdensome. The burden of establishing that an administrative subpoena is unduly burdensome is on the subpoenaed party and conclusory assertions are not sufficient to meet that burden. *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (5th Cir. 1996); *NLRB v. Dutch Boy, Inc.*, 98 LRRM 2396, 2399 (W.D. Okla. 1978) aff'd 606 F.2d 929 (10th Cir. 1979). The subpoenaed party must establish with specificity that production of the subpoenaed documents would cause serious disruption. *EEOC v. Maryland Cup Corporation*, 85 F.2d 471, 477 (1986). The fact that compliance with a subpoena may require the production of bulky, voluminous, or numerous documents is insufficient to establish that it is overly burdensome and does not serve as an excuse for noncompliance. *McGarry v. S.E.C.*, 147 F. 2d 389 (10th Cir. 1945); *NLRB v. United Aircraft Corp.*, 200 F. Supp. 48, 51 (D. Conn. 1961), aff'd mem., 300 F. 2d 442 (2nd Cir. 1962).

Here, the Respondent has not met its burden of establishing with particularity that the production of responsive documents would be unduly burdensome. The Respondent indicates that the request would require it to produce every document related to a managerial or supervisory change at JFK8 facility, but does not attempt to provide a ballpark estimate of the number of documents involved or the time/cost it would take to produce them. Further, as discussed by the parties in a conference call, the CGC may find it sufficient for the Respondent to produce, without more, an organizational chart or charts in effect during the relevant period. Accordingly, I deny the Respondent's petition to revoke subpoena request number 1.

Request Numbers 7 and 8

- 7. Documents that show the work rules, work guidelines and/or terms and conditions of employment pertaining to employee conduct and/or misconduct applicable to non-supervisory and non-managerial associates employed at Respondent's JFK8 facility at any time during the period covered by this subpoena, including documents showing any changes to the rules, the effective dates of any such changes, and a description or statement of the changes.**
- 8. Documents showing that Respondent distributed to its employees, including Gerald Bryson and Dimitra Evans, and that employees (including Bryson and Evans) received Respondent's work rules, work guidelines and/or terms and conditions of employment, including the dates that such rules and policies were received by Bryson and Evans.**

The Respondent asserts that Bryson was discharged for specific misconduct – i.e., making vulgar and derogatory comments towards another employee in violation of Amazon's Standard of Conduct. Thus, without waiving objections, the Respondent has

agreed to “produce the relevant portions from its Owner’s Manual and Guide to Employment – January 2019” (i.e., Workplace Harassment and the Standards of Conduct portions of the manual) and documents showing that the manual was distributed to Evans and Bryson. (Resp. Brf. pp. 8-9) The CGC seeks the production of the entire manual.

As it appears undisputed that the manual contains relevant standards of conduct, I will order that it be produced in its entirety so the CGC can view those standards in context. I note that, under Rule 106 of the Federal Rules of Evidence, if a portion of the manual were introduced, an adverse party may require the introduction of any other part that in fairness out to be considered. In order to determine what portions are subject to introduction pursuant to this rule, the parties should have access to the entire document.

Requests 16-18

- 16. During the period covered by this subpoena, documents showing disciplinary actions, including discharges, suspensions, written and oral warnings, issued to employees at Respondent’s JFK8 Facility and at its Regional facilities within which the JFK8 Facility is located, for violations of the sections named below of Respondent’s Standards of Conduct, for cursing, abusive, profane, harassing, or vulgar language, including on-and-off duty examples, together with the personnel file of each disciplined employee showing other discipline to that employee: (a) Category 1 (b) Category 2.**
- 17. During the period covered by the subpoena, documents showing disciplinary actions, including discharges, suspensions, written and oral warnings, issued to employees at Respondent’s JFK8 Facility and at its Regional facilities within which the JFK8 Facility is located, together with the personnel file of each disciplined employee showing other discipline to that employee.**
- 18. For the period covered by this subpoena, documents showing investigations conducted by Respondent in connection with disciplinary actions issued above in paragraph 17, including documents that reflect the identities of those who participated in the investigation, the substance of the investigation, and the investigatory findings.**

In its opposition to the petition, the CGC sought to modify these subpoena requests by changing “Regional facilities” to facilities that have “common management” with JFK8. The General Counsel does not know which facilities are under common management with JFK8 and argues that it is the Respondent’s obligation to identify those facilities for purposes of complying with these subpoena requests.

During a conference call, the Respondent identified two facilities in Connecticut as those that are JFK8’s Regional facilities.² The Respondent further represented that these three facilities have over 35,000 employees. The Respondent has not identified facilities under common management with JFK8 and objects to the production of responsive

² The General Counsel did not accept this representation as accurate.

documents for facilities other than JFK8. The Respondent also objects to the production of documents related to employee discipline for conduct that is not analogous to the alleged misconduct which led to the suspension and discharge of Bryson.

I will not grant the petition to the extent it seeks to limit production to documents reflecting the investigation of and discipline for a particular type of misconduct. The General Counsel is entitled to determine which investigatory and disciplinary records are analogous to those of Bryson and need not rely on the Respondent's determination in this regard. However, as discussed during the conference call, the parties should consult regarding the possibility of performing word searches that will target the most relevant documents and be less burdensome.

With regard to geographic scope, although the production of personnel records can be ordered for multiple facilities, such documents are most useful as a means of establishing disparate treatment if personnel decisions are made or approved above the local facility level. See *Savage v. Sara Lee Bakery Group, Inc.*, 2005 WL 8161339 (E.D. Tex. Mar. 30, 2005). Here, it is not clear to what extent, if at all, disciplinary decisions are made or approved at the regional or national level. Further, requests for documents from facilities with "common management" are ambiguous. However, the Respondent has not yet established that the production of documents from JFK8 and its two regional facilities would be excessively burdensome. Accordingly, I will, for now, limit the geographic scope of these subpoena requests to JFK8 and its two regional facilities as identified by the Respondent.³ However, the parties should be prepared to discuss this issue further when the record opens.

19. For the time period from March 1, 2020 to April 30, 2020, documents mentioning, discussing or pertaining to the Charging Party's discussions with employees or discussions with Respondent's supervisors, managers or agents on behalf of employees regarding COVID-19 safety precautions including:

- (a) Internal communications including but not limited to electronic communications, emails, text messages, notes, meeting minutes, meeting handouts, and investigative reports by, between and among Respondent's supervisors and/or agents regarding Bryson raising COVID-19 safety concerns at Respondent management meetings.**
- (b) Internal communications including but not limited to electronic communications, emails, text messages, notes, meeting minutes, meeting handouts, and investigative reports by, between and among Respondent's managers, supervisors and/or agents regarding media coverage of Bryson protesting;**
- (c) Internal communications including but not limited to electronic communications, emails, text messages, notes, meeting minutes, meeting handouts, and investigative reports by, between and among Respondent's**

³ The CGC may obtain responsive documents from two facilities other than those identified by the Respondent as regional facilities of JFK8, if desired.

supervisors and/or agents regarding Bryson's participation in protests outside of Respondent's JFK8 Facility regarding COVID-19 safety concerns;

and

(d) Documents mentioning, discussing or pertaining to employee sentiment regarding greater COVID-19 safety precautions, including but not limited to lists identifying likely or possible protest supporters or organizers.

These requests seek documents regarding any protected concerted activity engaged in by Bryson and the Respondent's knowledge, if any, of that conduct. Thus, the requests seek relevant documents. Further, I do not find the requests to be overly broad in temporal scope. However, the Respondent contends that these requests are unduly burdensome and overly broad to the extent they would require a search and review of documents in the possession of over 75,000 supervisors, manager, and agents. As discussed during the conference call, the parties should consult regarding the possibility of performing word searches that will target relevant documents and be less burdensome.

It is hereby ORDERED that the petition to revoke is denied in part and granted in part, as indicated above.

Dated: March 24, 2021
New York, New York

S/ Benjamin W. Green

Benjamin W. Green
Administrative Law Judge

Served by email as follows:

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EXHIBIT 3

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

AMAZON.COM SERVICES LLC

and

Case 29-CA-261755

GERALD BRYSON, AN INDIVIDUAL

**ORDER ON THE RESPONDENT'S PETITION TO REVOKE
CHARGING PARTY'S SUBPOENA DUCE TECUM B-1-1C9GVF7
AND REQUEST FOR A PROTECTIVE ORDER**

The Respondent filed a petition to revoke subpoena duces tecum number B-1-1C9GVF7 (Subpoena), which the Charging Party issued to the Respondent's custodian of records on April 13, 2021.¹ To the extent the Subpoena is not revoked, the Respondent seeks a protective order for any documents which must be produced.

The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by unlawfully suspending and discharging Charging Party Gerald Bryson because of his protected concerted activities (i.e., protesting the Respondent's failure to provide greater COVID-19 safety protections to employees).

Petition to Revoke

The Subpoena seeks a number of documents which have already been subpoenaed (subpoena duces tecum number B-1-1BUGMIX) from the Respondent by Counsel for the Acting General Counsel (CGC). On March 24, I issued an order largely denying the Respondent's petition to revoke subpoena B-1-1BUGMIX. The instant petition to revoke is denied to the extent the Subpoena seeks documents which were requested by subpoena B-1-1BUGMIX and those requests were not revoked by my March 24 order.

The petition to revoke Subpoena paragraphs 3, 4, and 5 are denied as documents responsive to those paragraphs may include evidence of animus and (for paragraph 5) disparate treatment.

The Respondent objects to Subpoena paragraphs 11-14, and 19(b) and (c) to the extent they concern certain employees who were openly involved in protected concerted activities with Bryson. The Respondent asserts that these Subpoena requests do not, as required by the Act, relate to any matter under investigation or in question. Respondent's counsel also contends that production of these documents will be disproportional to the needs of the case as it will lead to extraneous "mini-trials" regarding the Respondent's treatment of employees not listed in the complaint. The CGC and Charging Party claim

¹ All dates herein refer to 2021.

that the government's case will be advanced by evidence that the Respondent administered similar discipline to employees, including Bryson, who engaged in the same protected concerted activities.

Evidence concerning an employer's treatment of an alleged discriminatee in comparison to other employees who concertedly engaged in the same protected activity is relevant. In fact, such evidence may be exculpatory as an employer may defend on the grounds that such nondiscriminatees were known to have engaged in protected concerted activity and, unlike an alleged discriminatee, were subject to no adverse employment action. Of course, the Respondent has indicated no intent to raise such a defense and I share the concern of Respondent's counsel that the scope of this litigation might expand to involve "mini-trials" (if not full blown *Wright Line* inquiries) regarding adverse employment actions not listed in the complaint. However, given the Board's broad discovery-type standard of relevance with regard to subpoena requests and its reluctance to quash requests on the grounds that production is bulky and numerous, I will not revoke paragraphs 11-14, and 19(b) and (c) at this time.

With regard to other individual Subpoena requests, I make the following additional rulings:²

Subpoena Paragraph 2 – Paragraph 2 shall be limited to policies, procedural, standards, and guidelines, as further described therein, which applied to the JFK8 facility.

Subpoena Paragraph 11 – Paragraph 11 shall be revoked to the extent it seeks documents regarding any transfers or promotions of the named employees.

Subpoena Paragraph 20 – Paragraph 20 shall be limited to organizational charts and other documents, as further described therein, that cover or include the JFK8 facility.

Subpoena Paragraphs 6, 21-24 – Paragraphs 6, 21-24 shall be limited to documents concerning only those members of the Human Resources Department/Team, Loss Prevention Department/Team, Operations Department/Team, Safety Department/Team, and Learning Department/Team who have responsibilities with regard to the JFK8 facility.

Protective Order

A protective order with respect to the disclosure of subpoenaed documents may be entered upon good cause and/or to avoid harm. I will impose a protective order with regard to subpoenaed personnel records (such as employee discipline) of employees other than Bryson. Counsel for the parties may use subpoenaed personnel records in this proceeding, including the disclosure of such documents to potential witnesses and other

² To the extent certain paragraphs are not mentioned and specifically limited or revoked, the petition to revoke is denied.

individuals as may be necessary prepare for trial and understand the records.³ However, counsel shall not disclose subpoenaed personnel records to other individuals for a different purpose.

It is HEREBY ORDERED that the Respondent's petition to revoke the Subpoena is granted in part and denied in part, as described above, and a protective order is entered as described above.

Dated: April 27, 2021
New York, New York

S/ Benjamin W. Green

Benjamin W. Green
Administrative Law Judge

Served by email as follows:

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³ The Respondent has objected to the possible use of subpoenaed records in different legal forums and different legal proceedings. Presumably, the Respondent objects to the disclosure of documents that are relevant and would be useful to a legal adversary. I do not believe the Respondent has a particularly strong confidentially interest in preventing the disclosure of such documents earlier than they would normally be disclosed during the normal course of those proceedings. Accordingly, I do not grant this partial protective order on that basis. Rather, I grant the partial protective order on the fairly self-evident confidentially interest a nonparty employee would have with regard to personnel records such as discipline.

EXHIBIT 4

<p style="text-align: right;">Page 145</p> <p>1 MS. WILLIAMS: (Audio interference) --</p> <p>2 RECROSS-EXAMINATION</p> <p>3 Q BY MS. WILLIAMS: Ms. Volk, I just wanted to clarify a</p> <p>4 couple of things that I think testified about earlier. I know</p> <p>5 you mentioned that information is processed in Nuix. Do search</p> <p>6 terms typically get run before information is processed in</p> <p>7 Nuix?</p> <p>8 A No, not typically.</p> <p>9 Q How long have you been in the e-discovery industry doing</p> <p>10 this for clients?</p> <p>11 A Ten years.</p> <p>12 Q And is Amazon the only client that you do this for?</p> <p>13 A No.</p> <p>14 Q And was there anything about this process, based upon your</p> <p>15 experience, that seemed abnormal or unusual as far as the</p> <p>16 processing and searching?</p> <p>17 A No. This is completely typical.</p> <p>18 MS. WILLIAMS: Thank you, Your Honor. We have no other</p> <p>19 questions of the witness.</p> <p>20 JUDGE GREEN: Okay. And would -- Okay. So Ms. Cox, what</p> <p>21 would you like to do now?</p> <p>22 MS. COX: I just, I'm not sure that Ms. Volk answered my</p> <p>23 questions earlier; that seemed to be that there was some</p> <p>24 confusion.</p> <p>25 FURTHER REDIRECT EXAMINATION</p>	<p style="text-align: right;">Page 147</p> <p>1 or would -- would the Government accept a stipulation as to the</p> <p>2 number of documents, rather than producing the full processing</p> <p>3 log?</p> <p>4 Q BY MS. COX: How long is the processing log?</p> <p>5 A It is -- it's a pretty detailed log about everything that</p> <p>6 was processed, probably two, three pages. I'm -- I'm not sure</p> <p>7 off the top of my head.</p> <p>8 Q We would like the --</p> <p>9 A It can be quite -- it could be quite lengthy.</p> <p>10 MS. COX: All right.</p> <p>11 JUDGE GREEN: Well, let me ask that --</p> <p>12 MS. COX: To the incentive, it is not long. We would like</p> <p>13 the document produced.</p> <p>14 JUDGE GREEN: Okay.</p> <p>15 MS. WILLIAMS: And Your Honor, we'd object to the extent</p> <p>16 we may request the ability to redact that document.</p> <p>17 JUDGE GREEN: You do. You have it. Yes, you have.</p> <p>18 MS. COX: I'm sorry, I don't understand.</p> <p>19 JUDGE GREEN: It's going to be redacted to the extent</p> <p>20 necessary.</p> <p>21 MS. COX: Okay. And the same with the email to Ms. Volk,</p> <p>22 with the instructions to commence the search.</p> <p>23 Q BY MS. COX: Okay. Ms. Volk, so when did you get your</p> <p>24 second instructions after the documents were out of relativity;</p> <p>25 do you recall?</p>
<p style="text-align: right;">Page 146</p> <p>1 Q BY MS. COX: So I just want to just make clear that I was</p> <p>2 asking when she got her initial instructions to conduct the</p> <p>3 search.</p> <p>4 A March 15th.</p> <p>5 Q Okay. When did you put the documents in relativity?</p> <p>6 A I do not recall.</p> <p>7 Q How many documents did you put in relativity?</p> <p>8 A I don't recall off the top of my head.</p> <p>9 Q And is there a document that would help refresh your</p> <p>10 recollection?</p> <p>11 A Certainly.</p> <p>12 Q What is that document?</p> <p>13 JUDGE GREEN: Hold on. It's not whether it would refresh</p> <p>14 the recollection, it's just whether there's a document which</p> <p>15 shows that.</p> <p>16 Q BY MS. COX: Okay. What is the document?</p> <p>17 A Probably a processing export summary.</p> <p>18 JUDGE GREEN: Okay.</p> <p>19 Q BY MS. COX: You have it handy?</p> <p>20 A I don't. I can't pull it without being on my GPS.</p> <p>21 JUDGE GREEN: Okay. So I'd -- I'd ask the Respondent to</p> <p>22 produce that document to the extent, you know, any redacted,</p> <p>23 that's fine, but produce that document to the General Counsel.</p> <p>24 MS. COX: And --</p> <p>25 MS. WILLIAMS: Your Honor, would -- would counsel be able,</p>	<p style="text-align: right;">Page 148</p> <p>1 A The second instruction was March 18th.</p> <p>2 Q Okay. And how did you receive that instruction? Was it</p> <p>3 by email? Do you know?</p> <p>4 MS. COX: Judge, we'd like that email produced as well,</p> <p>5 redacted to the extent necessary.</p> <p>6 JUDGE GREEN: Okay. So please produce that as well.</p> <p>7 MS. COX: And I believe those are the extent of our</p> <p>8 questions, Judge.</p> <p>9 JUDGE GREEN: Okay. Thank you very much, Ms. Volk.</p> <p>10 We're -- you're -- you're free to go.</p> <p>11 Let's go off the record.</p> <p>12 (Off the record at 12:48 p.m.)</p> <p>13 JUDGE GREEN: And Mr. Grabowski, can you hear me? Can</p> <p>14 you -- can you start your video feed? There you are. There</p> <p>15 you are.</p> <p>16 Okay. So Ms. Cox, you're calling Mr. -- Mr. Grabowski.</p> <p>17 Mr. Grabowski -- we're back -- back -- are we back on the</p> <p>18 record?</p> <p>19 THE COURT REPORTER: Yes, we are.</p> <p>20 JUDGE GREEN: Okay. So raise your right hand.</p> <p>21 Whereupon,</p> <p>22 TYLER GRABOWSKI</p> <p>23 having been duly sworn, was called as a witness herein and was</p> <p>24 examined and testified, telephonically as follows:</p> <p>25 JUDGE GREEN: Okay. Thank you. And are you alone in the</p>

Page 149	Page 151
<p>1 room?</p> <p>2 THE WITNESS: Yes.</p> <p>3 JUDGE GREEN: Okay. So please don't communicate with</p> <p>4 anybody during your testimony by some other device. And please</p> <p>5 don't refer to documents that are not shown to you on the</p> <p>6 screen by counsel, okay?</p>	<p>1 Q Okay. And without disclosing any confidentiality, can you</p> <p>2 tell me what you were told was the purpose of the search?</p> <p>3 A I don't remember.</p>
<p>7 THE WITNESS: Okay.</p> <p>8 JUDGE GREEN: And please state and spell your name for the</p> <p>9 record.</p>	<p>4 Q What were you told to search for?</p> <p>5 A Feedback records from a designated time frame.</p>
<p>10 THE WITNESS: Tyler Grabowski, T-Y-L-E-R</p> <p>11 G-R-A-B-O-W-S-K-I.</p>	<p>6 Q What do you mean by feedback records?</p> <p>7 A So feedback would be any type of documented conversation</p> <p>8 between a leadership team and an hourly employee.</p>
<p>12 JUDGE GREEN: Okay. Thank you. And Ms. Cox is going to</p> <p>13 have some questions for you.</p>	<p>9 Q And do you recall when -- on what date you began to search</p> <p>10 for these documents?</p>
<p>14 Any time you're ready, Ms. Cox.</p>	<p>11 A The -- the same time frame; I think it was late March</p> <p>12 early -- sometime in the past month, late March, April 2021.</p>
<p>15 DIRECT EXAMINATION</p>	<p>13 Q Okay. So Mr. Grabowski, I'm going to ask you moving</p>
<p>16 Q BY MS. COX: Good afternoon, Mr. Grabowski. Thank you for</p> <p>17 being here today. Can you please tell us what your occupation</p>	<p>14 forward, just to look at whatever documents I put on my screen</p> <p>15 and --</p>
<p>18 is and your title?</p>	<p>16 A Uh-huh.</p>
<p>19 A I am a senior human resource business partner at Amazon.</p>	<p>17 Q -- if I need you to -- so this way you don't -- I can -- I</p>
<p>20 Q And you have been designated by Amazon as custodian of the</p> <p>21 records for purposes of this hearing, correct?</p>	<p>18 can see you while you're testifying. Thank you. Okay. So</p> <p>19 these documents, paragraphs 16, requesting disciplines, where</p> <p>20 are they normally kept?</p>
<p>22 A Yes.</p>	<p>21 A In Adapt.</p>
<p>23 Q Okay. And you collected documents responsive to paragraph</p> <p>24 16 of the subpoena? Let me show it to you, I'm sorry. Give me</p> <p>25 one moment.</p>	<p>22 Q Okay. What is Adapt.</p> <p>23 A An Amazon system for documenting and tracking feedback.</p> <p>24 Q And is Adapt an electronic system?</p> <p>25 A Yes.</p>
Page 150	Page 152
<p>1 A I have it.</p>	<p>1 Q And can you tell me, is that the only system that Amazon</p>
<p>2 Q Okay. So they do collect documents, responsive to</p> <p>3 paragraph 16 of the subpoena?</p>	<p>2 uses to maintain discipline?</p>
<p>4 A Yes.</p>	<p>3 A The documentation, like of the actual feedback, yes.</p>
<p>5 Q Okay. Who directed you to -- to search for those</p> <p>6 documents, the disciplines?</p>	<p>4 Q When you say "feedback", are you referring to disciplines?</p>
<p>7 A A member of the Amazon legal team.</p>	<p>5 A Yes. So the reason I say "feedback" is there is both</p>
<p>8 Q Do you recall the name of the person that requested you to</p> <p>9 search?</p>	<p>6 positive and constructive that are both documented in Adapt.</p>
<p>10 A Yes.</p>	<p>7 Q Okay. Disciplines that are not positive or constructed,</p>
<p>11 Q What's the name of that person?</p>	<p>8 are they -- or feedback, are they maintain in a different</p>
<p>12 A Kristin LaRosa.</p>	<p>9 location?</p>
<p>13 Q Do you recall when you were directed to conduct the</p> <p>14 search?</p>	<p>10 A No.</p>
<p>15 A It was sometime in the past month.</p>	<p>11 Q Okay. So are you saying that all disciplines are</p>
<p>16 Q Meaning April 20 -- I'm sorry, April 2021?</p>	<p>12 maintained and Adapt?</p>
<p>17 A Late March or early April 2021.</p>	<p>13 A For hourly employees, yes.</p>
<p>18 Q I'm sorry, you may have said this earlier, but did you</p> <p>19 collect documents or any other paragraphs responsive to the</p>	<p>14 Q Okay. Now, can you tell me, what facilities you -- you</p>
<p>20 subpoena?</p>	<p>15 conducted a search for in response to paragraph 16?</p>
<p>21 A So let me take a look at it real quick. The only sections</p>	<p>16 A EWR4, JFK8, and BDL3</p>
<p>22 I've looked at previously were 16 and 17.</p>	<p>17 Q And do you recall what date you began searching for JFK8</p>
<p>23 Q Okay. Is that what you're looking at right now is the</p> <p>24 subpoena?</p>	<p>18 disciplines?</p>
<p>25 A Yes.</p>	<p>19 A Late March and April of 2021.</p>
	<p>20 Q What about for EWR4?</p>
	<p>21 A That one was more recent. So sometime in April of 2021.</p>
	<p>22 Q What about BDL3?</p>
	<p>23 A Same as EWR4, April 2021.</p>
	<p>24 Q Give me one second.</p>
	<p>25 MS. COX: Judge, can I go off the record for a moment?</p>

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<p>1 JUDGE GREEN: Off the record.</p> <p>2 (Off the record at 12:58 p.m.)</p> <p>3 RESUMED DIRECT EXAMINATION</p> <p>4 Q BY MS. COX: I'm sorry. So you were saying that you</p> <p>5 more -- more recently began searching for EWR4?</p> <p>6 A Yes, that would be in April of 2021.</p> <p>7 Q Okay. Did you use any software to conduct the searches</p> <p>8 for paragraph 16?</p> <p>9 A Adapt.</p> <p>10 Q Is Adapt the system that you searched or is it the system</p> <p>11 that you used to search?</p> <p>12 A Adapt has its own reporting built into the website.</p> <p>13 Q Can you explain how that works?</p> <p>14 A So on the main page, there's a -- an option to click</p> <p>15 reporting on the top. When you click reporting, it'll bring up</p> <p>16 a page that has every single time -- it's like a baseline</p> <p>17 example. It says -- in the search bar, it says warehouse and</p> <p>18 then has semicolon and it defaults to this building in Phoenix.</p> <p>19 I believe that's where the program started but you can then</p> <p>20 change it to any type of site or multiple sites by putting a</p> <p>21 comma in between the location. And then you can select a time</p> <p>22 frame. So it either has relative time frames where you can put</p> <p>23 last day, the last month, last three months, last quarter, last</p> <p>24 year. Or you can choose absolute and choose a start and end</p> <p>25 date. And then when you click the search bar, it essentially</p>	<p>1 type of discipline?</p> <p>2 A That I'm not sure.</p> <p>3 Q Okay. I can give you example. For example, behavioral</p> <p>4 discipline -- like, search only behavioral disciplines versus</p> <p>5 search only safety disciplines, search only time off past</p> <p>6 disciplines. Is that possible, to choose the type of</p> <p>7 disciplines?</p> <p>8 A I have not searched for that, so I'm not sure.</p> <p>9 Q Okay. Can filters be combined to target disciplines by,</p> <p>10 for example, date, type of facility, and other -- other</p> <p>11 filters?</p> <p>12 A I know that once it's in Excel form, I've filtered it like</p> <p>13 that before. But prior to exporting to Excel, I'm not sure.</p> <p>14 Q Okay. Did you use search terms for paragraph 16?</p> <p>15 A Paragraph 16 is the same one that we've been talking</p> <p>16 about?</p> <p>17 Q Yeah. Do you need me to show the document? I can -- give</p> <p>18 me one moment and I'll pull it up for you.</p> <p>19 A Thank you.</p> <p>20 Q Of course. Okay. Can you see my screen?</p> <p>21 A Yes.</p> <p>22 Q Okay. So I'm talking about paragraph 16. So just take a</p> <p>23 minute, read it, let me know when you're done.</p> <p>24 A That's good. I can read it.</p> <p>25 Q So did you use search terms for paragraph 16?</p>
Page 154	Page 156
<p>1 brings up a table in the web browser that outlines all of the</p> <p>2 information in the format that was provided with an option to</p> <p>3 export it to Excel.</p> <p>4 Q Okay. Now, when you say "website", can you tell me what</p> <p>5 website you're referring to?</p> <p>6 A Adapt.</p> <p>7 Q So Adapt is a website and a search tool as well?</p> <p>8 A So Adapt is a website where employees have their -- their</p> <p>9 profiles where any type of disciplinary is documented and in</p> <p>10 that website is a reporting function.</p> <p>11 Q Okay. So are the disciplines sortable by date range?</p> <p>12 A If you export it to Excel, you can filter it and sort it</p> <p>13 by date.</p> <p>14 Q So prior to being exported, can you -- I -- I believe you</p> <p>15 testified that you can select a time period. Is that right?</p> <p>16 A Oh. Yes, that is correct.</p> <p>17 Q So can you limit the Adapt searches for a one-year period?</p> <p>18 A You can select the specific dates, yes.</p> <p>19 Q Okay. But it covers one year?</p> <p>20 A Yes. Or greater --</p> <p>21 Q Okay. I'm sorry. Say again?</p> <p>22 A Or greater or less. It's --</p> <p>23 Q Okay.</p> <p>24 A -- really, whatever.</p> <p>25 Q Okay. Is the discipline sortable by type or searchable by</p>	<p>1 A Just the warehouse location.</p> <p>2 Q Okay. Do you recall whether you searched for off- and on-</p> <p>3 duty examples?</p> <p>4 A What do you mean by that?</p> <p>5 Q So paragraph 16 is asking for disciplines, including on</p> <p>6 and off-duty examples.</p> <p>7 A Uh-huh.</p> <p>8 Q And I'm asking if that was part of your search. You see</p> <p>9 here? It says including on and off-duty examples.</p> <p>10 A Uh-huh. The search was conducted for all feedback during</p> <p>11 its designated time frame for that location.</p> <p>12 Q Okay. Do you recall what the time frame was?</p> <p>13 A I believe it was May 1st, 2019 through April 30th, 2020.</p> <p>14 Q Okay. So other than Adapt, is there any other place where</p> <p>15 employee discipline would be maintained?</p> <p>16 A Not for feedback records or conversations.</p> <p>17 Q Are there any other management systems that you searched</p> <p>18 for -- for paragraph 16 -- document management systems?</p> <p>19 A Yes.</p> <p>20 Q What were the other systems that you searched?</p> <p>21 A Exact.</p> <p>22 Q Did you search anything else?</p> <p>23 A OnBase.</p> <p>24 Q Say again?</p> <p>25 A OnBase.</p>
Page 153	Page 155
<p>1 JUDGE GREEN: Off the record.</p> <p>2 (Off the record at 12:58 p.m.)</p> <p>3 RESUMED DIRECT EXAMINATION</p> <p>4 Q BY MS. COX: I'm sorry. So you were saying that you</p> <p>5 more -- more recently began searching for EWR4?</p> <p>6 A Yes, that would be in April of 2021.</p> <p>7 Q Okay. Did you use any software to conduct the searches</p> <p>8 for paragraph 16?</p> <p>9 A Adapt.</p> <p>10 Q Is Adapt the system that you searched or is it the system</p> <p>11 that you used to search?</p> <p>12 A Adapt has its own reporting built into the website.</p> <p>13 Q Can you explain how that works?</p> <p>14 A So on the main page, there's a -- an option to click</p> <p>15 reporting on the top. When you click reporting, it'll bring up</p> <p>16 a page that has every single time -- it's like a baseline</p> <p>17 example. It says -- in the search bar, it says warehouse and</p> <p>18 then has semicolon and it defaults to this building in Phoenix.</p> <p>19 I believe that's where the program started but you can then</p> <p>20 change it to any type of site or multiple sites by putting a</p> <p>21 comma in between the location. And then you can select a time</p> <p>22 frame. So it either has relative time frames where you can put</p> <p>23 last day, the last month, last three months, last quarter, last</p> <p>24 year. Or you can choose absolute and choose a start and end</p> <p>25 date. And then when you click the search bar, it essentially</p>	<p>1 type of discipline?</p> <p>2 A That I'm not sure.</p> <p>3 Q Okay. I can give you example. For example, behavioral</p> <p>4 discipline -- like, search only behavioral disciplines versus</p> <p>5 search only safety disciplines, search only time off past</p> <p>6 disciplines. Is that possible, to choose the type of</p> <p>7 disciplines?</p> <p>8 A I have not searched for that, so I'm not sure.</p> <p>9 Q Okay. Can filters be combined to target disciplines by,</p> <p>10 for example, date, type of facility, and other -- other</p> <p>11 filters?</p> <p>12 A I know that once it's in Excel form, I've filtered it like</p> <p>13 that before. But prior to exporting to Excel, I'm not sure.</p> <p>14 Q Okay. Did you use search terms for paragraph 16?</p> <p>15 A Paragraph 16 is the same one that we've been talking</p> <p>16 about?</p> <p>17 Q Yeah. Do you need me to show the document? I can -- give</p> <p>18 me one moment and I'll pull it up for you.</p> <p>19 A Thank you.</p> <p>20 Q Of course. Okay. Can you see my screen?</p> <p>21 A Yes.</p> <p>22 Q Okay. So I'm talking about paragraph 16. So just take a</p> <p>23 minute, read it, let me know when you're done.</p> <p>24 A That's good. I can read it.</p> <p>25 Q So did you use search terms for paragraph 16?</p>
Page 154	Page 156
<p>1 brings up a table in the web browser that outlines all of the</p> <p>2 information in the format that was provided with an option to</p> <p>3 export it to Excel.</p> <p>4 Q Okay. Now, when you say "website", can you tell me what</p> <p>5 website you're referring to?</p> <p>6 A Adapt.</p> <p>7 Q So Adapt is a website and a search tool as well?</p> <p>8 A So Adapt is a website where employees have their -- their</p> <p>9 profiles where any type of disciplinary is documented and in</p> <p>10 that website is a reporting function.</p> <p>11 Q Okay. So are the disciplines sortable by date range?</p> <p>12 A If you export it to Excel, you can filter it and sort it</p> <p>13 by date.</p> <p>14 Q So prior to being exported, can you -- I -- I believe you</p> <p>15 testified that you can select a time period. Is that right?</p> <p>16 A Oh. Yes, that is correct.</p> <p>17 Q So can you limit the Adapt searches for a one-year period?</p> <p>18 A You can select the specific dates, yes.</p> <p>19 Q Okay. But it covers one year?</p> <p>20 A Yes. Or greater --</p> <p>21 Q Okay. I'm sorry. Say again?</p> <p>22 A Or greater or less. It's --</p> <p>23 Q Okay.</p> <p>24 A -- really, whatever.</p> <p>25 Q Okay. Is the discipline sortable by type or searchable by</p>	<p>1 A Just the warehouse location.</p> <p>2 Q Okay. Do you recall whether you searched for off- and on-</p> <p>3 duty examples?</p> <p>4 A What do you mean by that?</p> <p>5 Q So paragraph 16 is asking for disciplines, including on</p> <p>6 and off-duty examples.</p> <p>7 A Uh-huh.</p> <p>8 Q And I'm asking if that was part of your search. You see</p> <p>9 here? It says including on and off-duty examples.</p> <p>10 A Uh-huh. The search was conducted for all feedback during</p> <p>11 its designated time frame for that location.</p> <p>12 Q Okay. Do you recall what the time frame was?</p> <p>13 A I believe it was May 1st, 2019 through April 30th, 2020.</p> <p>14 Q Okay. So other than Adapt, is there any other place where</p> <p>15 employee discipline would be maintained?</p> <p>16 A Not for feedback records or conversations.</p> <p>17 Q Are there any other management systems that you searched</p> <p>18 for -- for paragraph 16 -- document management systems?</p> <p>19 A Yes.</p> <p>20 Q What were the other systems that you searched?</p> <p>21 A Exact.</p> <p>22 Q Did you search anything else?</p> <p>23 A OnBase.</p> <p>24 Q Say again?</p> <p>25 A OnBase.</p>

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<p>1 Q OnBase?</p> <p>2 A Yes.</p> <p>3 Q Okay. What is Exact?</p> <p>4 A An investigation tracking system. Another website that</p> <p>5 Amazon uses.</p> <p>6 Q It's an investigation tracking system?</p> <p>7 A Yes.</p> <p>8 Q And what is OnBase?</p> <p>9 A It's a system for employee personnel files.</p> <p>10 Q Do you recall when you conducted the search on Exact for</p> <p>11 paragraph 16?</p> <p>12 A In the last month.</p> <p>13 Q And do your recall when you conducted the search for</p> <p>14 OnBase for paragraph 16?</p> <p>15 A I'm sorry. Can you please repeat the question?</p> <p>16 Q Yeah. I was asking if you recalled when you conducted the</p> <p>17 search on the base (sic) system for paragraph 16?</p> <p>18 A OnBase?</p> <p>19 Q Yeah. OnBase.</p> <p>20 A Okay. Yeah, it was the same time frame. In the past</p> <p>21 month.</p> <p>22 Q Can you spell OnBase for me?</p> <p>23 A It's one word and it's O-N-B-A-S-E.</p> <p>24 Q Okay. Thank you. So I want to talk about OnBase a little</p> <p>25 bit. Are personnel files stored on OnBase?</p>	<p>1 A No.</p> <p>2 Q Okay. Can personnel files be sorted by date range in</p> <p>3 OnBase?</p> <p>4 A Within the employee's individual file, yes.</p> <p>5 Q What about personnel files generally?</p> <p>6 A In OnBase?</p> <p>7 Q Yeah.</p> <p>8 A So OnBase, you would need to pull individual employees by</p> <p>9 using their employee ID.</p> <p>10 Q Where do you get the employee IDs from?</p> <p>11 A It -- it honestly depends. I mean, there's multiple</p> <p>12 systems that have employee IDs.</p> <p>13 Q So when you conducted the search for paragraph 16, where</p> <p>14 did you get employee IDs from?</p> <p>15 A The Excel spreadsheet that came from Adapt.</p> <p>16 Q Okay. Can you explain to me whether you created search</p> <p>17 terms for paragraph 16?</p> <p>18 A No.</p> <p>19 Q So you did not create search terms?</p> <p>20 A I searched for warehouse IDs for a certain time frame but</p> <p>21 that was it.</p> <p>22 Q Okay. So I want to talk a little bit about the -- so</p> <p>23 are -- I just want to make sure I'm understanding this. So you</p> <p>24 searched for all disciplines within a time frame and exported</p> <p>25 it into an Excel spreadsheet. Is that what you're saying?</p>
<p>1 A Yes.</p> <p>2 Q Okay. Are dis -- employee disciplinary records -- can</p> <p>3 they also be found on OnBase -- in OnBase?</p> <p>4 A No.</p> <p>5 Q Okay. Can you explain to me how a search on -- on OnBase</p> <p>6 works?</p> <p>7 A So you can go into the system and search an employee ID</p> <p>8 and either select all employee type -- or like, employment file</p> <p>9 types or narrow it down based on a specific category and then</p> <p>10 press search.</p> <p>11 Q What are those categories that you can narrow by?</p> <p>12 A I wouldn't be able to accurately say all of them. There</p> <p>13 is a good number of them.</p> <p>14 Q Can you give me examples of some?</p> <p>15 A It would be any type of document that an employee signs or</p> <p>16 acknowledges. So like, different policies or different things</p> <p>17 that they're onboarded with, investigative notes, witness</p> <p>18 statements, drug and alcohol acknowledgement form, termination</p> <p>19 letters. Really anything that is a document that the employee</p> <p>20 would need to sign, acknowledge -- anything regarding their</p> <p>21 employment or anything that the site would upload.</p> <p>22 Q Do employees sign and acknowledge disciplines?</p> <p>23 A They have the ability to digitally acknowledge it.</p> <p>24 Q And if -- okay. And if an employee digitally acknowledges</p> <p>25 a discipline, does it go into OnBase in the personnel file?</p>	<p>1 A Correct.</p> <p>2 Q Okay. And then for specific disciplines, were you</p> <p>3 involved in searching for specific type of disciplines? For</p> <p>4 certain types on conduct, is what I'm asking.</p> <p>5 A Certain types or like, specific individuals?</p> <p>6 Q Spec -- specific types of conduct. Did you search for,</p> <p>7 for example, fighting? Were you involved in searching for</p> <p>8 specific type of discipline?</p> <p>9 A (No audible response).</p> <p>10 Q Okay.</p> <p>11 A I pulled the feedback history for a specific time frame</p> <p>12 for those three buildings into an Excel sheet.</p> <p>13 Q Okay. Okay. So I do want to show you a document, just to</p> <p>14 get some understanding about a -- a little more about Adapt.</p> <p>15 So let me just show you -- give me a moment, I'm sorry. Okay.</p> <p>16 Can you see my screen?</p> <p>17 A Yes.</p> <p>18 Q Okay. This is a -- tell me what this is.</p> <p>19 A A feedback document.</p> <p>20 Q Okay. So it's a one-page document, right? So can you</p> <p>21 explain --</p> <p>22 JUDGE GREEN: Can you see the screen now that you had to</p> <p>23 put it at greater than arms' length so they could see there was</p> <p>24 nothing in front of you? Can -- can you pull it back so you</p> <p>25 can read?</p>

<p style="text-align: right;">Page 161</p> <p>1 THE WITNESS: Can I move my computer closer? 2 JUDGE GREEN: Yeah, if it'd be easier for you. If that's 3 okay with -- 4 MS. COX: I'll zoom -- 5 JUDGE GREEN: Ms. Cox. 6 MS. COX: I'll zoom in for him so he can see it. 7 THE WITNESS: Thank you. 8 MS. COX: There you go. Can you see now? 9 THE WITNESS: Yes. 10 MS. COX: All right.</p> <p>11 Q BY MS. COX: So can you tell me what this -- what this 12 file path means?</p> <p>13 A It's a URL that likely would bring you to this feedback 14 document.</p> <p>15 Q Okay. Are these folders within Adapt?</p> <p>16 A I don't know.</p> <p>17 Q Okay. Give me one second. Sorry. All right. So I have 18 another document I want to show you. Okay. Sorry. I'm not 19 very good at this. All right. Can you see my screen?</p> <p>20 A Yes.</p> <p>21 Q Okay. So this is some documents that were produced in 22 response to paragraph 16. Okay. Can you see it?</p> <p>23 A No. Now I can.</p> <p>24 Q Better? Okay. So let me just start by asking you, when 25 you pulled these documents, did it have these -- these black</p>	<p style="text-align: right;">Page 163</p> <p>1 Q Yes. How long did it take you to search -- create that 2 document?</p> <p>3 A Maybe 15 minutes.</p> <p>4 Q Okay. And what about EWR4? How long did it take you to 5 create that Excel spreadsheet?</p> <p>6 A Probably same time frame, 10, 15 minutes.</p> <p>7 Q And what about BDL3? How long did it take you to create 8 that Excel spreadsheet?</p> <p>9 A I pulled the EWR4 and the BDL one together from the same 10 file.</p> <p>11 Q Okay. And how long did it take you to create that Excel 12 spreadsheet for both of those facilities?</p> <p>13 A About 10 to 15 minutes to get both.</p> <p>14 Q Okay. So I just want to -- for clarification, can you 15 tell me if I can search for a discipline without searching a 16 personnel file?</p> <p>17 A What do you mean by that?</p> <p>18 Q So does Adapt only contain the disciplines?</p> <p>19 A It would be discipline and then also positive feedback if 20 there's positive coachings in there.</p> <p>21 Q Okay. Does Adapt have anything else in it -- or -- or any 22 other types of files maintained in Adapt?</p> <p>23 A No, the --</p> <p>24 MS. WILLIAMS: I'm going to object to the extent this goes 25 beyond the scope of the requested documents.</p>
<p style="text-align: right;">Page 162</p> <p>1 boxes on it?</p> <p>2 A I didn't pull these documents.</p> <p>3 Q Okay. Are you familiar with -- with these barcodes at the 4 bottom of these documents?</p> <p>5 A No.</p> <p>6 Q Okay. Do you know what these barcodes are used for?</p> <p>7 A No.</p> <p>8 Q Okay. Do you know what this file path means?</p> <p>9 A No.</p> <p>10 Q Okay. So just to be clear, you're saying that you didn't 11 pull any documents. You only created a report. Am I 12 understanding that right?</p> <p>13 A I pulled the Excel report of feedback for the three 14 buildings.</p> <p>15 Q Okay. And then who did you give those reports to?</p> <p>16 A The Amazon legal team and Morgan, Lewis.</p> <p>17 Q Okay. And do you recall when you gave those -- those 18 reports to Amazon's legal team?</p> <p>19 A Sometime in the past month.</p> <p>20 Q Do you recall when you gave those reports to Morgan, 21 Lewis?</p> <p>22 A Same time frame.</p> <p>23 Q Okay. Do you recall how long it took you to conduct the 24 search for JFK8 disciplines?</p> <p>25 A The Adapt Excel file?</p>	<p style="text-align: right;">Page 164</p> <p>1 JUDGE GREEN: Overruled. Answer.</p> <p>2 Q BY MS. COX: Mr. -- Mr. Grabowski, I was asking what other 3 types of documents are maintained in Adapt, besides positive 4 feedback, discipline, and I believe you said co -- coachings?</p> <p>5 A Uh-huh. So coaching would fall under the -- the feedback 6 scope. Adapt is a performance management system.</p> <p>7 Q Okay. Okay. And what's -- I just want to take another 8 step back with you because I don't think I'm clear on what 9 Exact is. What -- so what's the difference between Exact, 10 Adapt, and OnBase?</p> <p>11 A OnBase would be all personnel files. Adapt would be 12 performance management, either feedback, positive, negative, 13 any type of disciplinary action. And Exact is where you would 14 host information related to witness statements, documents, 15 anything collected during the course of an investigation, which 16 then may lead to feedback that would be entered in Adapt.</p> <p>17 Q In Exact or Adapt?</p> <p>18 A Feedback.</p> <p>19 MS. COX: Oh. I got it. I withdraw. I'm sorry. I got 20 it.</p> <p>21 Q BY MS. COX: Okay. So what do you mean by performance 22 management system?</p> <p>23 A It's where any type of, like, feedback -- performance 24 management feedback is located. So both productivity, quality, 25 overall actual performance in an employee's path, as well as</p>

<p>Page 165</p> <p>1 any behavioral or attendance feedback.</p> <p>2 Q Okay. Now I want to talk a little bit about these Excel</p> <p>3 spreadsheets that we've been mentioning. Okay. So you also</p> <p>4 conducted the search for paragraph 17, right?</p> <p>5 A Can we please pull it up?</p> <p>6 Q Yes. Give me one moment.</p> <p>7 A Thank you.</p> <p>8 Q Of course. Okay. All right. Can you see paragraph 17?</p> <p>9 I'll zoom it for you.</p> <p>10 A That's perfect where it is.</p> <p>11 Q Okay. Just take a minute, read it, and let me know when</p> <p>12 you're done.</p> <p>13 A I'm done.</p> <p>14 Q Okay. So did you conduct the search for paragraph 17</p> <p>15 related to all disciplines for JFK8 and other facilities?</p> <p>16 A Yes, the Excel file.</p> <p>17 Q Okay. Now -- so did you create that Excel spreadsheet?</p> <p>18 A I exported it right from Adapt. It exports in that table.</p> <p>19 Q Okay. So what systems did you search for documents</p> <p>20 responsive to paragraph 17? I'll -- I'll show you again if you</p> <p>21 need to see it.</p> <p>22 A So we're referring to the actual, like, personnel files or</p> <p>23 like, documents regarding the feedback, not just the Excel</p> <p>24 file.</p> <p>25 Q Did you -- I'm asking you what systems you searched for</p>	<p>Page 167</p> <p>1 Q So -- I'm sorry. So are you saying that personnel files</p> <p>2 are also maintained on Exact?</p> <p>3 A No, but information leading to disciplinary action could</p> <p>4 be.</p> <p>5 Q Okay, so did you conduct a search for investigative</p> <p>6 documents responsive to the subpoena, as well?</p> <p>7 A Partially.</p> <p>8 Q Okay. We'll get back to that. Okay, so as far as the</p> <p>9 JFK8 search that you did in response to paragraph 17 of the</p> <p>10 subpoena, can you tell me if you created search terms?</p> <p>11 A I did not.</p> <p>12 Q Did you use search terms?</p> <p>13 A No.</p> <p>14 Q Were searched terms given to you at any point?</p> <p>15 A Not that I recall.</p> <p>16 Q Okay, so I'm going to show you an Excel spreadsheet that</p> <p>17 was produced in response to the subpoena. You just have to</p> <p>18 bear with me again a moment. But before I get there, can you</p> <p>19 tell me who gave you names to search, personnel files, who gave</p> <p>20 you the names of the personnel files to search for?</p> <p>21 A I don't remember.</p> <p>22 Q Okay, so I'm showing you, now -- hopefully, you'll be able</p> <p>23 to see my screen. Thank you for being with me. Okay. Can you</p> <p>24 see my screen?</p> <p>25 A I -- I can see it; I can't read it.</p>
<p>Page 166</p> <p>1 Q Did you conduct a search for personnel files?</p> <p>2 A Adapt.</p> <p>3 Q Okay. Did you conduct a search for personnel files?</p> <p>4 A Partially.</p> <p>5 Q What do you mean by partially?</p> <p>6 A Out of a list of names that was provided, split it up</p> <p>7 between myself and a member of my team. It was a pretty</p> <p>8 lengthy time ask.</p> <p>9 Q Okay. How many personnel files did you search for?</p> <p>10 A I don't remember.</p> <p>11 Q Who was the other person that you split the list up with?</p> <p>12 A Christina Stone.</p> <p>13 Q And who is Christina Stone?</p> <p>14 A A member of my team.</p> <p>15 Q Are you talking about HR?</p> <p>16 A Yes.</p> <p>17 Q Okay. Do you recall when you conducted the search for</p> <p>18 personnel files -- or partial search for personnel files?</p> <p>19 A In the past month. So April 2021.</p> <p>20 Q Do you recall what facilities you searched personnel files</p> <p>21 for?</p> <p>22 A Only JFK8.</p> <p>23 Q And what system did you use to search for personnel files</p> <p>24 at JFK8?</p> <p>25 A OnBase and Exact.</p>	<p>Page 168</p> <p>1 Q Yeah, let me try to -- okay, so this is a -- an Excel</p> <p>2 spreadsheet.</p> <p>3 A Um-hum.</p> <p>4 Q I'm just going to scroll so you can see how many</p> <p>5 disciplines are on here. Is this the type of Excel spreadsheet</p> <p>6 that you created in response to paragraph 17?</p> <p>7 A It looks like the same, like, format, the same columns,</p> <p>8 the same information that would be in there.</p> <p>9 Q Okay.</p> <p>10 A The only difference is the -- the top bar is colored gray.</p> <p>11 Q Okay.</p> <p>12 A Which, it just looks like some formatting.</p> <p>13 Q Give me one moment. I think I'm pulling up the wrong one.</p> <p>14 I'm sorry. My apologies. Okay, I think I have the right one</p> <p>15 now. Yes, okay. So I'm showing you now the correct Excel</p> <p>16 spreadsheet that is responsive to paragraph 17. Okay, so you</p> <p>17 can see it says at the bottom -- and if you can't see -- hold</p> <p>18 on. No, I keep showing you the same one. I'm sorry.</p> <p>19 JUDGE GREEN: Let me just ask -- I guess this is for Ms.</p> <p>20 Cox. The one you're showing now with 1,593 entries --</p> <p>21 MS. COX: Yes.</p> <p>22 JUDGE GREEN: Is it your understanding that that was the</p> <p>23 result of a word search and that was not just all of the</p> <p>24 disciplines at JFK8?</p> <p>25 MS. COX: Judge, my understanding is that these</p>

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1 disciplines are a response to a word search, yes. 2 JUDGE GREEN: Okay, and that there was -- there was -- was 3 there produced an Excel spreadsheet that just had all of the 4 disciplines at JFK8?. 5 MS. COX: This is that spreadsheet, yes. 6 JUDGE GREEN: Okay, and that would be in the several -- 7 over 10,000? 8 MS. COX: No, Judge. 9 JUDGE GREEN: Okay. That was not -- there was no 10 production of such a spreadsheet? 11 MS. COX: No. 12 JUDGE GREEN: Okay. 13 MS. COX: I just want to make sure that you all can see 14 this is supposed to say 1,594. I'm not sure you can see it 15 on -- okay. 16 Q BY MS. COX: All right, so this spreadsheet, you're 17 saying, is the same one you provided, and you're saying these 18 columns look different to you? I'll try to zoom it for you. 19 A Oh, no, those are the same columns. I didn't realize that 20 the information was taken out for the employee ID, employee 21 name, employee login. 22 Q Okay, so yes, so it says "employee ID, employee status, 23 type, manager name, login ID, warehouse, source type", meaning 24 behavioral safety, "status level, created date, created by, 25 updated by, feedback". And then, there are these "areas of	1 A Yes. 2 Q Okay, so I'm going to just do a little search so you can 3 see. It looks like this -- I'm sorry. I need a minute again. 4 This entry is identical to one other entry. Give me one 5 moment. 6 MS. COX: Can I just go off the record one moment, Judge? 7 JUDGE GREEN: Off the record. 8 (Off the record at 1:39 p.m.) 9 JUDGE GREEN: And not that I want to disrupt Mr. Cox -- 10 Ms. Cox's examination. But I believe Mr. Murphy indicated that 11 he might offer some explanation as to what was done in -- in -- 12 with regard to these spreadsheets? 13 MR. MURPHY: Yes. Thank you, Judge. May I? 14 JUDGE GREEN: Yes. 15 MS. COX: Judge, may I have the witness testify first, and 16 then Mr. Murphy can provide his explanation after we're done? 17 JUDGE GREEN: Okay. Well, is this going to take long, Mr. 18 Murphy? I mean, I think the purpose of this is to -- is to see 19 if we can short circuit some of the testimony by virtue of 20 stipulation. So go ahead, Mr. Murphy. 21 MR. MURPHY: Okay, thank you. So Tyler those reports -- 22 I'm going to call them reports; I don't know the technical 23 term. He ran those reports with the disciplines from JFK8, 24 EWR4 and BDL3. He transmitted them to us and -- and to counsel 25 for Amazon. And -- and in our office, we -- we ran two sets of
1 development", and "details, incident details, incident date", 2 so on and so forth. 3 Okay, so Mr. Grabowski, does this spreadsheet look like 4 the one that you gave counsel, Morgan, Lewis counsel, aside 5 from the two columns missing? 6 A It has the same information. 7 Q Okay. 8 A But it would be hard to say, just based on I don't know 9 how much data is -- is in this, what time frame it's from. But 10 that is what an Adapt export looks like. 11 Q Okay, so this information was extracted from Adapt? 12 A Yes. 13 Q So to your knowledge, do these individual lines represent 14 individual disciplines? 15 A Yes. 16 Q Okay. Do you -- do you know or have any reason to believe 17 that, other than these two columns, that this -- that this 18 spreadsheet might have been edited or altered in any way? 19 A It looks like there's three columns. 20 Q Right, so aside from these three columns, do you have any 21 reason to believe that this spreadsheet might have been edited 22 or altered in any way? 23 A No. 24 Q Okay, so -- so I want you to look at the first entry here. 25 And the date is 2019, May 2nd, May 2nd; you see that?	1 search terms against all of those reports. 2 The -- the first set we used was the paragraph 16 3 terms. There's seven terms, curse, vulgar abuse, et cetera, in 4 the body of the request itself. We -- we -- we did that. I 5 don't recall the numbers specifically, but my recollection is 6 that, with respect to -- with respect to JFK8, it was in the 7 range of 36 or so hits, ballpark. 8 We -- we then -- after conferring with counsel for the 9 General Counsel, they provided us a list of 31 terms to be used 10 for paragraph 17. And we ran those terms, those 31 terms 11 against the -- the reports from JFK8, EWR4 and BDL3. And that 12 search, that report, resulted in the 1,593 discipline reports 13 that Ms. Cox was showing to Mr. Grabowski. He -- he didn't do 14 that work. We did that internally using support staff here. 15 JUDGE GREEN: Okay. Did the -- did the -- did the -- 16 spreadsheet that came to you, did that have -- to Mr. Murphy. 17 Did that have 13,000 disciplines? 18 MR. MURPHY: Yes. The original -- the original cut 19 which -- which -- which Tyler described had -- for JFK8, had 20 13,000. My recollection is that, for EWR4, it was a little bit 21 more than that, and -- and BDL3 was less than that. I don't 22 remember the specific numbers, but. 23 JUDGE GREEN: Okay, and so -- oh, so the search -- so the 24 word search, the 31-termed word search, that was for all three 25 facilities or just JFK8?

<p style="text-align: right;">Page 173</p> <p>1 MR. MURPHY: We -- we've done it on all three. But the 2 document that Mr. Cox was showing Mr. Grabowski, that was for 3 JFK8.</p> <p>4 JUDGE GREEN: Okay, and that resulted in 1,594?</p> <p>5 MR. MURPHY: 3.</p> <p>6 JUDGE GREEN: 3, okay. Okay, thank you very much.</p> <p>7 MR. MURPHY: Yeah, thank you.</p> <p>8 MS. COX: Can I just ask Mr. Murphy when the 30 -- the 9 search for the 32 hits responsive to JFK8 was done, the date?</p> <p>10 MR. MURPHY: Boy, I -- I -- I don't know that off the top 11 of my head. I'm sorry.</p> <p>12 MS. COX: Okay.</p> <p>13 Q BY MS. COX: Mr. Grabowski, did you -- after counsel ran a 14 search on the spreadsheet, did you have any role in going and 15 looking for those 32 disciplinary forms?</p> <p>16 A I'm not sure if it was -- there was one specific --</p> <p>17 Q Did you collect 32 or 36 discipline forms at any point 18 during this last two months?</p> <p>19 A There was a list that was provided to counsel, which, the 20 list was then narrowed and sent back. Those ones were the 21 documents that I discussed earlier that Christina Stone and I 22 reviewed.</p> <p>23 Q Okay, but those documents that you reviewed, were they 24 personnel files or something else?</p> <p>25 A It was the back records from Adapt, and then anything from</p>	<p style="text-align: right;">Page 175</p> <p>1 version, a document, a PDF, or something, to counsel?</p> <p>2 A I don't believe so.</p> <p>3 Q Okay, what about personnel files that you and Ms. Stone 4 searched for? Did you ever provide the actual personnel file 5 to counsel?</p> <p>6 A Yeah, so that's what I thought you were asking the first 7 time; that is what we did. We took the list and pulled 8 information pertaining to it in our personnel files and then 9 sent it back.</p> <p>10 Q Okay, and you did that within the last month?</p> <p>11 A Yes.</p> <p>12 Q Okay, thank you. Now, I'll get back to this Excel 13 spreadsheet. So I was showing you the spreadsheet with the 14 1,593 disciplines for JFK8, right. So I was asking you to look 15 at this first entry. Oops, excuse me.</p> <p>16 Okay, so this first entry, I told you before, was May 2nd, 17 2019. Now, I've filtered this document, and I want you to look 18 at line -- let me try to zoom it -- line 500. If you look at 19 the dates, do you see the dates there, May 2nd, 2019?</p> <p>20 A Yes.</p> <p>21 Q Okay. Do you see this day, too, May 2nd, 2019?</p> <p>22 A Yes.</p> <p>23 Q Okay, so now, look at the -- the body of this. I'll try 24 to give a -- put a little spotlight so you can follow my 25 cursor. Okay, so you see this here?</p>
<p style="text-align: right;">Page 174</p> <p>1 the Exact or personnel files that may have supplemented it.</p> <p>2 Q Okay, so after counsel gave you the list, you conducted 3 the search for feedback; when did you conduct the search?</p> <p>4 A In the past month.</p> <p>5 Q Okay, do you recall when you gave a disciplinary, or I'm 6 sorry, the feedback documents back to counsel, after you and 7 Christina Stone completed your partial search? Do you recall 8 when you gave the -- the results back?</p> <p>9 A It was sometime in the past month, but I don't know the 10 specifics.</p> <p>11 Q Okay. Did you also provide personnel files to counsel 12 after the terms were narrowed?</p> <p>13 A I'm sorry, can you please repeat that?</p> <p>14 Q Yeah. Did you also provide personnel files to counsel 15 after they narrowed those -- those -- narrowed the search?</p> <p>16 A Is that different than the -- the question that was just 17 asked about going through the list?</p> <p>18 Q Yeah, because I asked you about feedback just now, and 19 now, I'm asking you about personnel files. Unless I made an 20 error, that's -- that -- that was my intention. My first 21 question was: after counsel narrowed down the search to 36 22 hits, did you provide feedback documents to counsel?</p> <p>23 A So the feedback documents would be what is outlined in the 24 Excel file.</p> <p>25 Q Right. Did you provide a actual physical or electronic</p>	<p style="text-align: right;">Page 176</p> <p>1 A Um-hum.</p> <p>2 Q Just take a -- take a second; read it to yourself?</p> <p>3 A Okay.</p> <p>4 Q Okay, so these entries are exactly the same, right?</p> <p>5 A Yes, it appears so.</p> <p>6 Q Okay, but they appear on this spreadsheet as numbers 2 and 7 500, right?</p> <p>8 A Yes.</p> <p>9 Q Okay, so I'm going to do the same, so you can take a look 10 at it, with the next entry. This entry is May 7th, 2019.</p> <p>11 Okay, so we have these two, number 353 and 1224; do you see the 12 date on this, May 7th --</p> <p>13 A 7.</p> <p>14 Q -- 2019. And then, for this entry, May 7 -- I'm sorry -- 15 May 7th, 2019. Now, take a look at the body of this document 16 starting here, 4/24/19, and then you can read starting 4/24/19. 17 Let me know when you're done?</p> <p>18 JUDGE GREEN: At some point, are we just going to ask 19 why -- why this is the case, why there would be redundant 20 entries?</p> <p>21 MS. COX: We will, Your Honor.</p> <p>22 JUDGE GREEN: Is there some reason why we need to have him 23 read to document to determine that they're redundant?</p> <p>24 MS. COX: I just want to be clear that there's nothing 25 I've done to this document and that -- that these -- these</p>

<p style="text-align: right;">Page 177</p> <p>1 entries are, in fact, duplicates.</p> <p>2 JUDGE GREEN: Okay. Well, why don't we accept your</p> <p>3 representation to that effect as true, why don't you ask a</p> <p>4 question about it?</p> <p>5 MS. COX: Okay.</p> <p>6 Q BY MS. COX: So Mr. Grabowski, is there any reason why</p> <p>7 these entries would be duplicated on this spreadsheet?</p> <p>8 A I'm not sure.</p> <p>9 MS. COX: So just so you know, Your Honor, I mean, there</p> <p>10 are about -- this -- this document has got 45 percent, 35 to 45</p> <p>11 percent, duplicate entries. So this number of 1,593 is</p> <p>12 completely inaccurate. It doesn't represent the number of</p> <p>13 disciplines that Respondent claims are responsive to paragraph</p> <p>14 17 of the subpoena.</p> <p>15 JUDGE GREEN: But why do we care?</p> <p>16 MS. COX: Judge, because Respondent has been asking us to</p> <p>17 rely on these charts and not accept the underlying --</p> <p>18 JUDGE GREEN: Yeah, but there's nothing being -- there's</p> <p>19 nothing being -- not being disclosed here. So I take it that</p> <p>20 it would not be particularly hard to do data searches and order</p> <p>21 an Excel spreadsheet so that it's fairly easy to find the --</p> <p>22 the duplicates. And I don't know how that hurts you, so</p> <p>23 there's less -- so the -- so the -- the word search has</p> <p>24 produced less documents. Well, how does that hurt you? The --</p> <p>25 the -- the word search produced the documents that it produced.</p>	<p style="text-align: right;">Page 179</p> <p>1 MS. COX: Okay. Give me one moment, judge. Okay.</p> <p>2 Q BY MS. COX: So, Mr. Grabowski, did you ever deduplicate</p> <p>3 this Excel spreadsheet?</p> <p>4 A No.</p> <p>5 Q Did anyone direct you to deduplicate this Excel</p> <p>6 spreadsheet?</p> <p>7 A No.</p> <p>8 Q Is it possible to retrieve the individual feedback or</p> <p>9 discipline documents without entering a personnel file?</p> <p>10 A If we wanted the individual feedback, we would go employee</p> <p>11 by employee in Adapt.</p> <p>12 Q So you don't have to access the personnel file to retrieve</p> <p>13 a disciplinary document?</p> <p>14 A The -- like, the documents from the Excel sheet?</p> <p>15 Q Yes, those individual documents, where would you retrieve</p> <p>16 it from?</p> <p>17 A Adapt.</p> <p>18 Q Is it in the personnel file?</p> <p>19 A No.</p> <p>20 MS. COX: Okay. I don't know if Mr. Gaston has any</p> <p>21 questions.</p> <p>22 MR. GASTON: Just one question.</p> <p>23 DIRECT EXAMINATION</p> <p>24 Q BY MR. GASTON: You mentioned three different systems,</p> <p>25 OnBase, Adapt, and Exact; are those the sum total of the</p>
<p style="text-align: right;">Page 178</p> <p>1 I don't understand why that's prejudicial in any way.</p> <p>2 MS. COX: Well, Judge, because -- because the -- the</p> <p>3 Respondent's representation that this, the request, is</p> <p>4 overburdensome and needs to be further narrowed --</p> <p>5 JUDGE GREEN: Well, but that ship has sailed. We're</p> <p>6 not -- we're not dealing with -- I've already denied the --</p> <p>7 the -- the petition to revoke. That's not what we're</p> <p>8 litigating here. So and I think the parties should understand</p> <p>9 what we're litigating here. We're not litigating whether the</p> <p>10 petition -- we're not relitigating the petition to revoke.</p> <p>11 What we're doing is, we're establishing a record that, in</p> <p>12 the event of nonproduct -- of nonproduction or incomplete</p> <p>13 production, I'm -- and -- and pending a potential motion for</p> <p>14 banning those sanctions, that I'm in a position to rule on</p> <p>15 that. That's what we're looking at here.</p> <p>16 MS. COX: Yes, Judge. And I believe that these duplicate</p> <p>17 entries go to a bad faith search, Judge.</p> <p>18 JUDGE GREEN: Okay.</p> <p>19 MS. COX: They're not -- it's not a reasonable inclusion</p> <p>20 search with 100 percent --</p> <p>21 JUDGE GREEN: That's fine. I -- that's fine. I do not --</p> <p>22 I do not agree, respectfully. I -- I don't -- I don't mean</p> <p>23 to -- to interrupt you, but I don't agree and -- but you can</p> <p>24 make that argument. You can certainly make that argument, but</p> <p>25 in the meantime, let's -- let's move on.</p>	<p style="text-align: right;">Page 180</p> <p>1 systems that would have the personnel information? And I use</p> <p>2 that term in the broadest sense; I don't want to narrow it</p> <p>3 to -- I know it's been a specialized term over the course of</p> <p>4 this examination. Is -- are those the three systems that would</p> <p>5 have personnel information that would be potentially</p> <p>6 responsive?</p> <p>7 A There is honestly so many different systems at Amazon that</p> <p>8 have employee information; that's why there's specific places</p> <p>9 for each information.</p> <p>10 Q I see, and based on that statement, could you share how</p> <p>11 you selected three -- these three systems and not any others?</p> <p>12 A So Adapt would be any type of feedback or disciplinary</p> <p>13 action, which is what we were looking into.</p> <p>14 And then, Exact would be the system that houses</p> <p>15 investigative notes that would lead up to different types of</p> <p>16 disciplinary action, if an investigation was necessary based on</p> <p>17 the allegation. And then, OnBase is what was used in years</p> <p>18 prior to Exact being established.</p> <p>19 So the Exact investigation system is relatively new at</p> <p>20 Amazon. It has not been there in the entire tenure that I've</p> <p>21 been employed. And previously, investigative notes or witness</p> <p>22 statements that would lead up to disciplinary action would be</p> <p>23 uploaded to an employee's personnel file in OnBase.</p> <p>24 So in looking for what the exact disciplinary action is</p> <p>25 and what information would have been compiled in leading up to</p>

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1 that disciplinary action, those are the systems they would be
2 stored --

3 **Q Okay, and this is for 00 only for hourly employees; did I**
4 understand that correctly?

5 A So Adapt is for hourly employees to -- to document the
6 disciplinary action, yes.

7 **Q Okay, so nonhourly employees are not even part of this**
8 landscape that you've set forth?

9 A They have OnBase and Exact. Like, they -- they can be
10 tracked in those two systems, but the Adapt system is solely
11 for the purpose of hourly employees.

12 MR. GASTON: Okay. That's all I have to now. Thank you.

13 RESUMED DIRECT EXAMINATION

14 **Q BY MS. COX: Mr. Grabowski, so as I understand it, you've**
15 turned over 30 -- around 30 to 36 disciplines to Respondent
16 counsel, and personnel files; have you turned over any
17 documents -- actual underlying documents responsive for BDL3?

18 A No.

19 **Q Have you turned over any responsive documents for --**
20 sorry, the other one is -- EWR4?

21 A No.

22 MS. COX: Okay. Judge Green, may I just go off the record
23 and consult with counsel --

24 JUDGE GREEN: You want to go --

25 MS. COX: In a breakout room?

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1 **Q Okay. And you exported the -- some of those personnel**
2 files from JFK8?

3 A Ms. Stone and I went through both of them. I don't
4 remember exactly. So I know that we were looking through the
5 list, and not all feedbacks would have something documented or
6 investigative notes based on what the feedback is, so I -- I
7 can't say for sure if I actually exported all of them. I know
8 that the two of us started going through the list, but she did
9 compile the majority of it.

10 **Q Did you ex -- did you export any personnel files from**
11 onboard -- or OnBase, I'm sorry?

12 A For this specific request?

13 **Q For JFK -- the 32 to 36 disciplines responsive to**
14 paragraph 16 for JFK8.

15 A I don't remember.

16 **Q Okay. So do you know if Ms. Stone exported the personnel**
17 files from OnBase responsive to paragraph 16?

18 A Yes.

19 **Q Have you ever -- have you ever exported a personnel file**
20 from OnBase in your years of employment?

21 A Yes, and that's why I can't remember if I did for this
22 specific request just based on the number of requests that come
23 in, but yes, I have.

24 **Q And how long does it take to export a personnel file from**
25 OnBase?

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1 JUDGE GREEN: Okay. Off the record.

2 (Off the record at 2:08 p.m.)

3 THE COURT REPORTER: Back on the record.

4 RESUMED DIRECT EXAMINATION

5 **Q BY MS. COX: Okay, so Mr. Grabowski, you testified earlier**
6 that you turned over, sometime this month, 32 or 36 feedback
7 documents and personnel files, along with Ms. Stone, to
8 Respondent counsel. I just want to ask you a few more
9 questions about that.

10 So the forms from the feedback documents from Adapt can be
11 exported, right?

12 A They can be exported, like in the Excel format?

13 **Q No, in -- in showing the document itself, the underlying**
14 document.

15 A Yes.

16 **Q Okay, and you did that?**

17 A No.

18 **Q Okay. So who -- I'm sorry, I don't understand, then, what**
19 you did with Ms. Stone. So who -- who actually exported the
20 documents, not the chart, from -- from Adapt?

21 A I don't know.

22 **Q Okay. With regard to the personnel files that and Ms.**
23 Stone searched in OnBase -- so did you -- so -- so those
24 personnel files were able to be exported, right?

25 A Yes.

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1 A I'm sorry. If you could just give me one second there is
2 a -- all right, sorry about that.

3 MS. COX: That's okay. I'll withdraw the question. I
4 don't have anything else, Judge.

5 JUDGE GREEN: Okay. Anything from Mr. Kearl?

6 MR. KEARL: Yes, Your Honor.

7 CROSS-EXAMINATION

8 **Q BY MR. KEARL: Mr. Grabowski, do the -- the three systems**
9 we've been talking about, the OnBase, Adapt, and Exact systems,
10 do those have data for all seasonal and full-time employees at
11 Amazon?

12 A Yes.

13 **Q So if I were a -- it wouldn't matter if I was a seasonal**
14 employee at Amazon or a full-time employee, any performance
15 documents, feedbacks, investigatory documents would all be
16 captured by those three systems?

17 A Yes.

18 **Q Is there an appeals process for disciplinary documents at**
19 Amazon?

20 A For certain levels of feedback, yes.

21 **Q And in the event that there is a -- an appeal and a**
22 writeup is subsequently removed or changed, how is that
23 reflected in the Adapt system?

24 A The status would be changed from completed to exempted.

25 **Q And when you ran your reports for these processes, did you**

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1 include -- did you limit your search by completed or exempted
 2 in any way?

3 A I believe it was the first time I ran it was completed,
 4 and then I believe the next time I ran it was all inclusive.

5 Q Okay. And was that a part of the instructions that you
 6 were given initially in running these searches?

7 A Yes.

8 Q Okay. And so just -- just to be clear, so the first time
 9 you ran this report and -- and you were get -- there were
 10 13,000 results, that was a -- that was a completed-only
 11 process; is that correct?

12 A I don't know how many rows the Excel file had.

13 Q But the first -- the first time you ran the search was
 14 the -- was the only completed and nonexempted?

15 A Yes.

16 Q And then the second time you ran the search that was both
 17 completed and exempted, what other -- what other changes were
 18 there that you made to the search -- the -- the broad terms of
 19 the search parameters?

20 A So the first time the file was pulled, it was all feedback
 21 for the JFK location, and then the Excel file was filtered for
 22 completed prior to the sending to the team. The team then
 23 asked to broaden the search to not just completed for all
 24 feedback, so the raw feedback for JFK every level status was
 25 exported and sent.

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1 Q Okay. So -- so -- okay. And do you remember the -- the
 2 approximate dates of these two searches or the amount of time
 3 that -- between the two searches that you ran?

4 A I honestly don't remember.

5 Q You don't remember. Okay. And is there any way to delete
 6 disciplinary records such that it would not show up as exempted
 7 but would remove the file altogether?

8 A No.

9 Q Okay. And so I -- I -- my understanding is in the Adapt
 10 system the feedback that is -- that is recorded are these
 11 documents similar to the document that Ms. Cox showed earlier,
 12 the -- the supportive feedback document. Can you tell me a
 13 little bit about the kinds of documents that are housed in the
 14 Exact and OnBase systems?

15 A Yeah. So Exact is for investigative tracking. So you
 16 have the ability to tie employees directly to a case that's
 17 created of all levels: hourly, salary, any type of employee,
 18 and note there involvement in the case, whether they're the one
 19 that made the allegation or a witness or the person that the
 20 claim is against, as then -- as well as any details, and then
 21 if there are witness statements collected from parties during
 22 the investigation, they would be uploaded to the case, and then
 23 with an outcome or the type of feedback, whether it was
 24 substantiated or not substantiated, what was delivered or like,
 25 what -- what the company would be proceeding with would be

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1 documented in the Exact case, along with all investigative
 2 notes before closing it out.

3 And then in the OnBase system --

4 Q Before -- before you start OnBase, if you -- if I may
 5 interject. So when you export data from Exact, are you
 6 filtering by case number or by employee number or are you able
 7 to do both?

8 A You can search for whichever you prefer.

9 Q And are you able to similarly limit the search by dates
 10 and facilities as you are when it -- within Adapt?

11 A You might be able to. I'm not sure. The only way that
 12 I've ever filtered it is by looking for a specific employee by
 13 searching their employee ID.

14 Q Okay. And in the course of your searches related to the
 15 subpoena in question, were you given specific cases to search
 16 for or were you given specific employee numbers to search for?

17 A So it would be the Excel file that was sent back with 30-
 18 so-odd names on it with a specific employee, and then as you
 19 saw in the Excel file, when you scroll over, it has the details
 20 of the incident, so we'd be looking for the specific employee
 21 and the situation that was being outlined in the Excel sheet.
 22 So if there's a date that the feedback was delivered, we're
 23 looking for the investigation that happened that led to that
 24 feedback.

25 Q Okay. And when you run that search -- so hypothetically,

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1 if there is an employee that is on that list of 36, if they
 2 were involved in a disciplinary action and there was another
 3 employee who submitted a witness statement, would that witness
 4 statement have been captured in the search that you ran in the
 5 Exact system?

6 A Yes, so if it was pertaining to the same Exact case, which
 7 it'd be a case is what would lead to a certain level of
 8 feedback or disciplinary action. So if we're referring to the
 9 list that we search for and the outcome was X feedback,
 10 anything in that investigation, statements from different
 11 employees that led to that situation, would be captured in the
 12 same Exact case number, which could also be located by
 13 searching any employee that was involved or tied to the case.

14 Q Okay, so searching for a single employee on a case will --
 15 will generate results for all other information related to that
 16 same case in Exact?

17 A If you go into the case number. So for example, I search
 18 my employee ID in the Exact system. What it's going to do is
 19 then come up with a list of Exact case numbers, have a -- like,
 20 a column that has case numbers, a column that has the
 21 involvement in it, whether it's claimant or witness, and then
 22 it has the date the case was created and the status of it, if
 23 it's open, closed, and if you click that case, then it will
 24 pull up all of the information you're looking for with witness
 25 statements, details, outcomes, substantiated, not

<p style="text-align: right;">Page 189</p> <p>1 substantiated, and who else was involved.</p> <p>2 Q So when you ran this report, you searched for the name</p> <p>3 of -- or the number of the work -- the employee. You found the</p> <p>4 date that corresponded with that case number. You opened that</p> <p>5 case number, and then you exported all of the documents that</p> <p>6 were asa -- that were associated with that case number for the</p> <p>7 32 or 36 cases?</p> <p>8 A So that is the process that Christina followed, yes.</p> <p>9 Q Okay, and what -- what format of outputs was generated by</p> <p>10 Exact from that system?</p> <p>11 A That I'm not sure.</p> <p>12 Q Do you know what kinds of output are able to be exported?</p> <p>13 A Yes.</p> <p>14 Q What kinds of -- what kinds of files are able to be</p> <p>15 exported from that process?</p> <p>16 A So you can export witness statements or you can export a</p> <p>17 case summary.</p> <p>18 Q Okay. And -- and -- and are you also able to export an</p> <p>19 Excel document that has all the information, similar to the</p> <p>20 Adapt's reports that you ran in Excel?</p> <p>21 A I don't believe so.</p> <p>22 Q Okay.</p> <p>23 A So the witness statements would export in PDFs and so</p> <p>24 would the case summary.</p> <p>25 Q And do you have to -- so what -- how long would it take</p>	<p style="text-align: right;">Page 191</p> <p>1 tenure, we didn't -- we haven't always had Exact, so it did</p> <p>2 come, I would say, probably in the last two years. Prior to</p> <p>3 that, witness statements and investigative notes would be</p> <p>4 uploaded to OnBase.</p> <p>5 Q Were there any -- in your searches related to this</p> <p>6 subpoena, did you perform any searches in the OnBase system?</p> <p>7 A That's where Christina Stone would've looked.</p> <p>8 Q Okay. And -- and in terms of exporting documents from</p> <p>9 that, is it similar to Exact where you can export the PDF</p> <p>10 documents, but not an Excel document?</p> <p>11 A That is correct.</p> <p>12 Q And how long would it take you to export a single</p> <p>13 employee's records from the OnBase system?</p> <p>14 A I would say similar to Exact, five to ten minutes. It --</p> <p>15 it can be longer depending on different factors: how many</p> <p>16 times the employee's worked for Amazon, how long the employee's</p> <p>17 worked for Amazon. So if an employee gets rehired, they</p> <p>18 maintain the same employee ID, so if someone gets rehired,</p> <p>19 you're now looking at duplicate terms of employment,</p> <p>20 termination summary, acknowledgement of every policy, so the</p> <p>21 larger the file, the more time it takes to export it.</p> <p>22 Q Okay. But is it fair to say that the five-to-ten-minute</p> <p>23 range is roughly how long it would take per -- per record?</p> <p>24 Okay.</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 190</p> <p>1 Q you to export documents for a single case?</p> <p>2 A It can vary based on employee -- I mean, depends how many</p> <p>3 cases the employee has to go in and locate it then export it.</p> <p>4 Q Well, but just a single -- so if -- if we were to look up</p> <p>5 your employee ID, let's say there's five cases, we select one</p> <p>6 case, and we export all the documents related to that, how long</p> <p>7 does that process take, roughly?</p> <p>8 A Five, ten minutes.</p> <p>9 Q Okay. And the -- so let's now shift over to OnBase. Can</p> <p>10 you tell me a little bit about the kind of documents that are</p> <p>11 housed in the OnBase system?</p> <p>12 A So it's any type of employee personnel documents. A lot</p> <p>13 of the most basic stuff ties to when employees are first</p> <p>14 onboarded. So you have their terms of employment. You have</p> <p>15 policy acknowledgement forms, anything that they had to</p> <p>16 electronically or digitally sign upon being hired, and then if</p> <p>17 there's policy updates or different documents that are pushed</p> <p>18 to them through their employment, they'll have access to what's</p> <p>19 called their MYDOCS portal, which is essentially their version</p> <p>20 of OnBase in their employee portal. They can see all the</p> <p>21 documents they've acknowledged or signed in their tenure. If</p> <p>22 there is a termination letter, it would be in there. And then</p> <p>23 this site also has the opportunity to upload documentation</p> <p>24 pertaining to that employee. So prior to Amazon creating the</p> <p>25 Exact system because, as I mentioned earlier, like in my Amazon</p>	<p style="text-align: right;">Page 192</p> <p>1 Q And -- and remind me, did you say that you -- you did not</p> <p>2 recall the dates that you -- you and your team member performed</p> <p>3 the searches in Exact and OnBase?</p> <p>4 A I would say that it was in within the last month, but I</p> <p>5 don't remember the specific dates.</p> <p>6 Q Okay. And you received specific instructions to search</p> <p>7 those databases as well?</p> <p>8 A I don't remember.</p> <p>9 Q Okay. And just who did -- who -- did you ultimately make</p> <p>10 the decision to -- to identify the relevant database systems</p> <p>11 within Amazon or was that someone else that decided that Adapt,</p> <p>12 OnBase, and Exact were the three?</p> <p>13 A I don't remember.</p> <p>14 Q Okay. You -- but it might have been you, but it might've</p> <p>15 been somebody else?</p> <p>16 A Yeah, so if, like, I'm looking at in my Amazon knowledge</p> <p>17 what is relevant and like, where information will be housed</p> <p>18 relevant to those, like, those are the one -- the three systems</p> <p>19 that come to mind, but I cannot recall if someone were to --</p> <p>20 had given me that guidance.</p> <p>21 MR. KEARL: Okay. Okay. And then, ju -- just one last</p> <p>22 question. I -- I ju -- know Judge we spoke about the duplicate</p> <p>23 information.</p> <p>24 Q BY MR. KEARL: Are -- it -- you know, in terms of</p> <p>25 exporting documents, have you seen duplicative results being</p>

<p style="text-align: right;">Page 193</p> <p>1 spit out of Adapt while running these searches and exporting 2 them in Excel?</p> <p>3 A No.</p> <p>4 MR. KEARL: Okay. And Judge, if I -- if I may also just 5 say that you stated earlier that it was no longer a relevant 6 matter, but as of today, I still have not received any delivery 7 of documents from my last subpoena, which is identical to the 8 subpoena that was served on the 30th of March. This was served 9 on the 13th. There was your order on the 15th instructing 10 Respondents to deliver materials that were also responsive to 11 General Counsel's subpoena dated March 1st, and so the -- to -- 12 to the extent that there still is a petition to revoke that has 13 not been ruled on and to the extent that my client and -- 14 and -- you know, his attorney have not actually seen any di -- 15 discovery documents, the -- the duplicative nature of -- or 16 the -- the duplicative results and the assertion that 17 the volume of information is so great that information cannot 18 be produced is still -- is still relevant, especially where 19 it -- as concerns the subpoena that -- that I had -- I had 20 served.</p> <p>21 JUDGE GREEN: Okay. So if we have enough time today, 22 we're going to get to that -- that matter, the issue of the 23 Charging Party's outstanding subpoena, so put a pin in that. 24 I -- I still don't think that the duplicates are going to be 25 significant with regard to that petition to revoke, but anyway,</p>	<p style="text-align: right;">Page 195</p> <p>1 came from Christina. I don't think that they're -- I don't 2 recall finding an Exact or having an Exact case for the ones 3 that I searched.</p> <p>4 Q Did you, though, search to see if there was anything 5 either in Adapt or Exact to see if there was anything for those 6 individuals?</p> <p>7 A Yes.</p> <p>8 Q And how long does it typically take to search in Exact to 9 see if there is something for an individual or not?</p> <p>10 A I would say searching for it probably similar, like five, 11 ten minutes to go in and then find the information that 12 you're -- you're looking for, and then more time if we're 13 looking to export it, get it to PDF.</p> <p>14 Q And I know earlier there was some discussion about whether 15 the status had changed on a discipline. Did you give counsel 16 everything that showed both statuses in the system?</p> <p>17 A Yes.</p> <p>18 Q Did you duplicate any information, as far as you were 19 aware, when you pulled information from the Adapt system?</p> <p>20 A No.</p> <p>21 Q Could there be duplicative information in the Adapt system 22 if, for example, more than one person is receiving discipline 23 for the same incident?</p> <p>24 MS. COX: Objection, Your Honor. Calls for speculation.</p> <p>25 JUDGE GREEN: Overruled.</p>
<p style="text-align: right;">Page 194</p> <p>1 let -- let's -- let's move on. So is that your -- is that -- 2 are you done, Mr. -- Mr. Kearn?</p> <p>3 MR. KEARL: That is the extent of my questions, Your 4 Honor. Thank you.</p> <p>5 JUDGE GREEN: Anything from the Respondent?</p> <p>6 CROSS-EXAMINATION</p> <p>7 Q BY MS. WILLIAMS: Our thank you for hanging -- hanging 8 through this. Wanted to make sure I understood a couple of 9 things from you. So did you pull any personnel files for this 10 matter?</p> <p>11 A A Excel file for the three sites, yes, and then for 12 individual employees, I remember I began going through the list 13 with Christina, but I don't remember exactly who pulled what.</p> <p>14 Q So you may have pulled some of them, you just didn't pull 15 all of them?</p> <p>16 A Yes. I know for a fact that Christina pulled the majority 17 of them, based on the time of the day the request came in. She 18 worked on it on a Saturday to finish it off and get me the rest 19 of the documents.</p> <p>20 Q And about how long does it take you to -- to download a 21 personnel file?</p> <p>22 A Five, ten minutes.</p> <p>23 Q And did you pull anything from the Exact system that we 24 talked about earlier?</p> <p>25 A Pertaining to this, no. I think all of the Exact ones</p>	<p style="text-align: right;">Page 196</p> <p>1 A So there could be duplicative information, but it would -- 2 not all of the lines would be duplicate because it would be a 3 different employee receiving the feedback.</p> <p>4 Q BY MS. WILLIAMS: So other than the employee, you might 5 have the same description for a disciplinary record?</p> <p>6 MS. COX: Objection --</p> <p>7 A Yes.</p> <p>8 MS. COX: -- Your Honor. If I'm -- Ju -- Judge, 9 respectfully, if I'm not allowed to put in any evidence of the 10 number of duplicates, I'm -- I just object to Respondent 11 explaining away the duplicates.</p> <p>12 JUDGE GREEN: I -- I can tell you I'm -- I'm completely 13 unimpressed by the duplicates as evidence of a problem with 14 regard to compliance with the subpoena.</p> <p>15 MS. WILLIAMS: We'll -- we'll -- we'll move on, Your 16 Honor. Your Honor, if I may have just a brief three minutes to 17 confer with my colleagues, and then I think we'll -- we'll wrap 18 it up.</p> <p>19 JUDGE GREEN: Okay, so off the record.</p> <p>20 (Off the record at 2:48 p.m.)</p> <p>21 JUDGE GREEN: Any more questions from the Respondent?</p> <p>22 MS. WILLIAMS: No, Your Honor, not at this time.</p> <p>23 JUDGE GREEN: Okay. And any follow up from the General 24 Counsel?</p> <p>25 MS. COX: No, Judge.</p>

<p style="text-align: right;">Page 229</p> <p>1 those documents for the -- for the trial.</p> <p>2 But I think that that -- I think that that type of</p> <p>3 protective order is probably appropriate here. You know, with</p> <p>4 regard to 9 through 14, you know -- you know, it's -- it's a</p> <p>5 broad discovery standard. And you know, the -- the --</p> <p>6 bottom line is, is that in -- in all -- I mean, I'm -- I'm</p> <p>7 going to think about it, actually, before I issue the order.</p> <p>8 But it's hard to say that these documents are not -- are</p> <p>9 not relevant, although I don't think documents regarding</p> <p>10 transfers and promotions are relevant. But the documents are</p> <p>11 probably relevant within -- you know, within the framework of</p> <p>12 our standard as it pertains to subpoenaed records.</p> <p>13 And so I don't know -- you know, I don't really think that</p> <p>14 I'm in a position to deny that on the grounds of -- of relevance --</p> <p>15 relevance. I -- I am loathed to effectively have a trial</p> <p>16 regarding two additional employees. But you know, with regard</p> <p>17 to the petition to revoke, that's probably -- comes within</p> <p>18 the -- within the gamut of -- of relevance, those documents.</p> <p>19 You know, and I understand that the Respondent has,</p> <p>20 essentially, made yet -- you know, yet another request for a</p> <p>21 postponement. But I'm -- I'm not -- I'm not going to grant</p> <p>22 that request on the basis of the request for information</p> <p>23 related to Mr. Smalls and Mr. Palmer.</p> <p>24 That's where we're at. I'm going to issue an order, and</p> <p>25 I'm going to try to issue an order tomorrow. And I -- you</p>	<p style="text-align: right;">Page 231</p> <p>1 the Respondent shows up, and not every document has been</p> <p>2 produced, that there's necessarily going to be inferences, that</p> <p>3 there's going to be Bannon-Mills remedies.</p> <p>4 That's not at all necessarily the case. We're going to</p> <p>5 have to deal with that as it moves forward. And that's</p> <p>6 something that the General Counsel should consider in</p> <p>7 determine -- in their determination as to whether they want to</p> <p>8 go forward.</p> <p>9 You know, I'm not -- all I can tell you is I haven't --</p> <p>10 you know, I haven't granted any Bannon-Mills remedies. And you</p> <p>11 know, that's something that's -- that's a different issue</p> <p>12 than -- than the -- the revocation issue, and we'll deal with</p> <p>13 that as the time comes. Is there anything else we have to do</p> <p>14 on the record today?</p> <p>15 MS. BUFFALANO: We have one off the record item, but</p> <p>16 nothing more, nothing more for on the record.</p> <p>17 MS. COX: Nothing from the General Counsel.</p> <p>18 JUDGE GREEN: All right. So let's go off the record.</p> <p>19 (Whereupon, the hearing in the above-entitled matter was</p> <p>20 recessed at 4:47 p.m. until Monday, May 3, 2021 at 10:00 a.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 230</p> <p>1 know, I would just suggest to you that to the extent you want</p> <p>2 to do anything on the motion to postpone, try -- you know, if</p> <p>3 there's a special appeal, try to do it as soon as possible.</p> <p>4 MR. MURPHY: And Judge, so assuming you're going to do</p> <p>5 what you said you're going to do, and -- we proceed on the 3rd,</p> <p>6 what -- how -- what -- what is your expectation in terms of us</p> <p>7 producing any documents that -- that -- that might be covered</p> <p>8 by the subpoena? And don't forget, the counsel for the General</p> <p>9 Counsel has -- has a -- I think a 99 paragraph, and some</p> <p>10 paragraph request, in the queue right behind this.</p> <p>11 JUDGE GREEN: So -- okay. You know, I can address that a</p> <p>12 little bit. The petition to revoke, and -- and a request for</p> <p>13 sanctions for nonproduction are two completely different</p> <p>14 things. So we have a broad standard of discovery. And it's</p> <p>15 hard -- it's hard to establish the documents are -- are overly</p> <p>16 broad and burdensome for purposes of subpoena revocation.</p> <p>17 That doesn't necessarily mean that if the Respondent</p> <p>18 doesn't show up with the documents that the General Counsel, or</p> <p>19 subpoenaed -- subpoenaed party is necessarily entitled to some</p> <p>20 form of sanctions. You know, there are other factors. There</p> <p>21 are -- there's willfulness. There's whether the search has</p> <p>22 been reasonable or unreasonable, whether it's in good faith or</p> <p>23 bad faith, whether there's prejudice.</p> <p>24 And you know, the -- the General Counsel should be mindful</p> <p>25 that. It's not like -- you know, it's not as though if -- if</p>	<p style="text-align: right;">Page 232</p> <p>1</p> <p style="text-align: center;">C E R T I F I C A T I O N</p> <p>2 This is to certify that the attached proceedings, via Zoom</p> <p>3 videoconference, before the National Labor Relations Board</p> <p>4 (NLRB), Region 29, Case Number 29-CA-261755, Amazon.com</p> <p>5 Services LLC and Gerald Bryson, held at the National Labor</p> <p>6 Relations Board, Region 29, Two Metro Tech Center, 5th Floor,</p> <p>7 Brooklyn, New York 11201, on April 26, 2021, at 11:04 a.m. was</p> <p>8 held according to the record, and that this is the original,</p> <p>9 complete, and true and accurate transcript that has been</p> <p>10 compared to the reporting or recording, accomplished at the</p> <p>11 hearing, that the exhibit files have been checked for</p> <p>12 completeness and no exhibits received in evidence or in the</p> <p>13 rejected exhibit files are missing.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p style="text-align: right;">_____ BARRINGTON MOXIE</p> <p>18</p> <p style="text-align: right;">Official Reporter</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 JUDGE GREEN: Okay. So I -- I -- I've looked at the
 2 papers, and -- and as far as I can tell, the -- the remain --
 3 the remaining requests are -- are relevant, you know, I -- I --
 4 I have a question about paragraphs 1 and 2; 19, 22, 23, 24, and
 5 27 appear to me to be relevant and subject to production; 15
 6 and 16 seem to be relevant and subject to production, given the
 7 document that was attached to the General Counsel's opposition
 8 as Exhibit C.
 9 For paragraph 17, however, I -- I'm limiting it to docu --
 10 at least in -- initially to documents for JFK 8, as opposed to
 11 the other two facilities. I think we've learned during the
 12 course of this process that the number of documents available
 13 at one of these very large facilities is -- is numerous, and
 14 you know, disciplinary reports, for example, I have one
 15 facility is -- appears to be sufficient for the General
 16 Counsel's purposes. I -- I was always skeptical of the --
 17 the relevance and usefulness of -- of disciplinary
 18 records at the other two facilities. I granted it because of
 19 the Board's very broad standard of relevance, and reluctance to
 20 squash documents because they -- they are burdensome, but at
 21 least for the time being, I -- I'm limiting 17 to JFK 8.
 22 With regard to 1 and 2, you know, I -- I just -- I guess I
 23 just -- I have a question for the General Counsel, you know.
 24 MS. COX: Can you go back one moment, Judge? So you
 25 said --

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1 workplace incident management reporting template, if I'm
 2 correct, those are -- those are just people who received
 3 noticed, were -- were designated as people who would see --
 4 received notice of what was going on with regard to the
 5 discharge. It seems like a lot of people, and I -- I just -- I
 6 wondered where the -- where the Region's going with it.
 7 MS. COX: Well, Judge, to date, we still don't know who
 8 made the decision to terminate Mr. Bryson, and these
 9 individuals appear to have been -- participated, consulted, or
 10 involved in his discharge.
 11 JUDGE GREEN: Okay.
 12 MS. COX: And for those reasons --
 13 JUDGE GREEN: All right, so listen. I'm going to order
 14 the production of 1 and 2 as well.
 15 MR. MURPHY: But -- Your Honor?
 16 JUDGE GREEN: Yes.
 17 MR. MURPHY: If -- I mean, if we need to identify these
 18 individuals, we'll do -- if you're ordering us to do that,
 19 we'll do it. I suggest that a lot of them are identified on
 20 that exhibit to the counsel for the General Counsel's
 21 opposition to the petition to revoke.
 22 JUDGE GREEN: Well, I mean, it -- it -- I think that
 23 the -- the subpoena, as it pertains to those individuals, which
 24 is 1 and -- it's really 1 and 2, because 3 and 4 have been
 25 withdrawn, and 6 and 7 have already been produced --

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1 JUDGE GREEN: Yes.
 2 MS. COX: -- 17 is limited to JFK 8; what about 18?
 3 JUDGE GREEN: Oh.
 4 MS. COX: Did you say both? I didn't -- I didn't hear.
 5 JUDGE GREEN: No, I'm not -- J -- JFK 18, that's been
 6 produced, right? That -- the cat's out of the bag on that one.
 7 So no, I'm not -- we're only -- wait, am I right? What -- what
 8 is 18? I'm sorry. Let me look.
 9 MS. COX: 18 is the global workplace incident management
 10 reports regarding referencing harassment by any employee at
 11 JFK.
 12 JUDGE GREEN: Yes, I'm sorry. So yes, so 17 and 18 are
 13 currently limited. You're right, are currently limited to
 14 JFK 8.
 15 MS. COX: Okay.
 16 JUDGE GREEN: 1 and 2, I -- you know, I'm just trying to
 17 understand. When you're trying to -- in these cases, when
 18 you're looking at the investigation and who conducted it and
 19 who made decisions to, you're often looking at whether there
 20 was a rush to judgment, whether you have, you know, no
 21 investigation, and somebody who generally doesn't have
 22 authority to discipline or discharge. They -- they -- they
 23 rush to discharge somebody because there's this knee jerk
 24 reaction, negative reaction to protect a concerted activity.
 25 It -- you know, the -- the names in the global work --

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1 MR. MURPHY: Okay.
 2 JUDGE GREEN: -- so it's really 1 and 2.
 3 MR. MURPHY: Okay.
 4 JUDGE GREEN: And what they're looking for is additional
 5 information regarding job duties and the -- the jurisdiction of
 6 these individuals with regard to the facility.
 7 So I don't know. I -- you know, so --
 8 MR. MURPHY: So -- so we'll -- we'll --
 9 JUDGE GREEN: -- I don't know if there is -- if they -- if
 10 the General Counsel already has that information; it doesn't
 11 sound like they do.
 12 MR. MURPHY: Yeah, so you know, we'll -- we'll identify
 13 their positions. It's just that -- that the way the request is
 14 worded, right, documents that show job duties,
 15 responsibilities, I mean, so take for example, Bradley Campbell
 16 (phonetic). Documents that show his responsibility or
 17 authority, that -- that may be another, like, massive search
 18 for anything in --
 19 JUDGE GREEN: I understand. So do you have job
 20 descriptions? Do you just have a -- do you have a general job
 21 description for -- for --
 22 MR. MURPHY: To -- to be quite honest, Your Honor, I don't
 23 know the answer to that question.
 24 JUDGE GREEN: Okay.
 25 MR. MURPHY: We'll find that out and report, but -- but